INSTRUCTIONS FOR COLLECTORS OF EXCISE IN

PROSECUTIONS before Justices of the Peace, for Forfeitures incurred, or Offences committed against the Laws relating to the Duties of EXCISE, and other Duties under the Management of the *Commissioners of Excise*.

WITH SOME

OBSERVATIONS on several Clauses in the *Excise-Acts*, and other *Acts* relating to such Proceedings, and to Proceedings upon Appeals, at the *Quarter-Sessions*, in those Cases. And some PRECEDENTS of *Informations*, *Summons*, *Judgments*, and *Warrants* to be used in such Cases.

In Two Parts.

PART I.

LONDON:

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INSTRUCTIONS
for
COLLECTORS
of
EXCISE

PART I.

LONDON:

To the HONOURABLE

His MAJESTY's *Commissioners*

FOR THE

DUTIES of *EXCISE*, &c.

GENTLEMEN,

YOU having taken Notice, That just Prosecutions before Justices of the Peace, for palpable Frauds against the Laws of Excise, have upon Cavils and frivolous Objections against the Forms of such Proceedings, too often miscarried, to the Incouragement of the Fraudulent, and Prejudice of the fair Trader, and of the Revenue, in which the whole Nation is interested; and you having thereupon directed that Instructions should be prepared for Preventing the like for the future, I here present you with a Treatise designed for that Purpose.

Some Parts thereof will perhaps seem tediously prolix, where much is said to explain what may appear not to need Explanation; but I hope that will be excused, when it is consider'd, that these Instructions were not wanted or intended for your own Use, but for the Use not only of your Collectors,

lectors, but alſo of your other Officers, who generally being unacquainted with legal Proceedings, have (as by Experience and to my great Trouble I have found) ſtood in need of further Direction, even after Inſtructions which ſeemed very plain and intelligible.

Beſides, if I ſhould here repeat but ſome of the many Accounts you have received of juſt Proceedings, quaſhed upon foreign and trifling Exceptions, it would (I believe) then appear, that nothing can be too full, plain, or particular, to furniſh your Officers with Anſwers to ſuch Cavils and Objections.

If the Buſineſs of my Office would have given me Leave to have begun and ended what is here done, without frequent Interruptions, ſome Repetitions might have been prevented, ſome Paragraphs more orderly placed, and the whole more correct; as it is, I hope it will be conducive to the carrying the Exciſe Laws into due Execution againſt Frauds, which in conſequence will be a Protection to fair Traders and a Benefit to the Revenue; and if ſo, it will anſwer all that was propoſed or intended by you, and that hath been endeavoured by,

GENTLEMEN,

Your moſt Humble Servant,

EXCISE-OFFICE,
Octob. 8, 1716.

John Ellis.

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INSTRUCTIONS FOR COLLECTORS of EXCISE.

CHAP. I.

Of the Jurisdiction of Justices of the Peace, in Causes relating to the Penalties and Forfeitures imposed by the Acts of EXCISE, *&c.*

THE Act of Parliament for taking away the Court of Wards and Liveries, *&c.* and for setling a Revenue upon his late Majesty King *Charles* the Second, his Heirs and Successors, *viz.* 12 *Car.* II. Cap. 24. having laid Duties of Excise upon Beer, Ale, and other Liquors therein mention'd; and having, for the better charging and collecting those Duties, required Common Brewers and others liable to those Duties, to do and perform several Things in the said Act mention'd;

and forbid the doing other Things in the ſaid Act likewiſe expreſſed, under ſeveral and reſpective Penalties and Forfeitures in the ſaid Act mention'd.

For the more eaſie and ſpeedy recovering theſe Penalties and Forfeitures, the ſaid Act hath erected and eſtabliſhed a Juriſdiction, at that time entirely new, *viz.* *Sect.* 44. *Exciſe Book, Fol.* 42. it is enacted, *That all Forfeitures and Offences againſt the ſaid Act, or any Clauſe therein, which ſhall be made or committed within the Limits of the Chief Office in* London, *ſhall be heard and determined by the Chief Commiſſioners,* &c. *and that all Forfeitures and Offences againſt the ſaid Act,* &c. *made,* &c. *within any other Counties, Cities, Towns, or Places, within the Kingdom of* England, *or Dominions thereof, ſhall be heard and determined by* any Two *or more Juſtices of the Peace,* reſiding near *to the Place where ſuch Forfeitures ſhall be made, or Offence committed,* &c.

Other Acts of Parliament have been ſince made, for granting Additional Duties, and Duties on other Manufactures; and for laying other Penalties and Forfeitures: But for the recovering thereof, they all refer to this Act, which is the Ground and Foundation of the Juriſdiction which Juſtices of the Peace have in Cauſes relating to all theſe Duties; and therefore, for the better underſtanding how to proceed before Juſtices of the Peace in theſe Cauſes, it may not be amiſs to make ſome Obſervations on the before-mentioned Clauſe.

Firſt, That the Juriſdiction in theſe Cauſes is not by the foregoing Clauſe limited or confined to the neareſt Juſtices; for ſuch a Reſtriction would

would have made the putting these Laws in Execution very precarious: But this Act having given this Jurisdiction to *any* two or more Justices *residing near*, &c. and not having ascertained or expressed, what nearness is thereby meant or intended, it seems reasonable to infer from thence, that the Intent and Design of the Makers of this Act was, that this Jurisdiction should be liberal and extensive; and that the adding these Words, *residing near*, &c. is only by way of Direction, and to intimate, that the Parties should not unnecessarily be obliged to take very long Journeys.

Secondly, That tho' this Act particularly mentions Forfeitures and Offences made, &c. (in) Cities, Towns, &c. yet it doth not say, that such Offences, &c. in such Cities or Towns, shall be heard and determined by Two or more Justices (*of*) such City or Town, but only by Two or more Justices *residing near*, &c. by which it seems as tho' the Makers of this Act had not any View or Expectation, that the Justices of each particular Place would be better qualified than other Justices who were as near; but did think that these Laws would more likely be effectually executed by extending, rather than by confining and cramping the Jurisdiction; because the one would make the Prosecutions on these Laws easie both to the Justices and to the Parties, which the other would often make to be difficult, and sometimes impracticable, some Justices, as particularly Common Brewers, being expresly excluded from acting as Justices in these Cases, relating to Prosecutions on the Acts of Excise.

And therefore when any Forfeiture or Offence against these Laws is made or committed in any

Town (not being a County of it ſelf) or in any Corporation where ſome of the Magiſtrates are Juſtices of the Peace, ſuch Forfeiture or Offence may be heard and determined, either by Two or more of the Juſtices of the Peace of the County, where ſuch Town or Corporation is, or by Two or more of the Juſtices of ſuch Town or Corporation, or by One of the County-Juſtices, and One of the Juſtices of ſuch Town or Corporation, according as the Informer ſhall lay and exhibit his Information; notwithſtanding that in the Charters of ſome Corporations there are Clauſes for excluding all other Juſtices of the Peace, except the particular Juſtices of ſuch Corporation, from acting in Matters of the Peace ariſing and happening within ſuch Corporation; and for that purpoſe the County-Juſtices may meet, and ſit at, and in ſuch Corporations.

For tho' the Charter of a Corporation may be of Force ſufficient to reſtrain the Cognizance of the Matters of the Peace, happening in ſuch Corporation, to the Juſtices thereof, and to exclude all other Juſtices of the Peace from medling therein; yet it won't follow, that ſuch excluding Charter will be ſufficient to exclude other Juſtices of the Peace from hearing and determining Offences againſt theſe Laws, happening within ſuch Corporation.

Becauſe ſuch excluding Clauſes, mentioning (as they generally do) only Matters of the Peace, and ſuch other Matters as originally, or at the times of granting thoſe Charters, were within the Cognizance of Juſtices of the Peace, thoſe Clauſes cannot properly be conſtrued or taken to extend to Offences againſt the Exciſe-Acts, which are not Breaches of the Peace, but are of

a quite different Nature, and would not have been within the Cognizance and Juriſdiction of Juſtices of the Peace, had not theſe Acts of Parliament, by expreſs Words, appointed them ſo to be And tho' the Juriſdiction which Juſtices of the Peace have in theſe Matters, is indeed by this Act of Parliament conveyed to them by the Deſcription of Juſtices of the Peace; yet that doth not alter the Nature of the Offences, nor doth make the incurring theſe Penalties and Forfeitures, which are of Civil Cognizance, to become Breaches of the Peace.

Beſides it may be further obſerved, That ſince the making this Act, Juſtices of the Peace are to be conſidered as Perſons having two Capacities of diſtinct and different Kinds; or as Magiſtrates having two Juriſdictions of diſtinct and different Natures; the one, their Ancient and Original Juriſdiction; the other, their New Additional or Collateral Juriſdiction; in all which Caſes it is a ſtanding Rule, That if two different Capacities centre and concur in one Perſon, yet thoſe Capacities remain and continue as diſtinct and ſeparate as if they were in two different Perſons.

The Juriſdiction which Juſtices of the Peace had before the making this Act, may be called their Original Juriſdiction: But this Juriſdiction for hearing and determining Offences againſt Laws of Exciſe, may be called their Collateral Juriſdiction, veſted in them by the expreſs Words of this Act of Parliament. By one, they are Magiſtrates in Matters relating to the Peace; by the other, they are by this Act of Parliament ſpecially and particularly conſtituted Judges, to hear and determine concerning Offences againſt

the ſeveral Clauſes contained in this Act; and therefore, tho' ſuch Charters may reſtrain or confine their Original Juriſdiction, yet it won't follow, that therefore ſuch Charters will confine or reſtrain their Additional or Collateral Juriſdiction in Matters relating to the Exciſe-Laws.

But that which will be ſufficient to Anſwer all that can be ſaid upon this Head, is, That no Charter is, or can be ſufficient to over-rule or controul the expreſs Words of an Act of Parliament; and the aforeſaid Act of Parliament having expreſly given this Juriſdiction to *any* Two or more Juſtices *reſiding near*, &c. no Charter can confine or reſtrain that Juriſdiction to the particular Juſtices of a Corporation, ſo as to exclude the other Juſtices near to the reſpective Places where theſe Offences happen to be committed.

And therefore it is, and will be, at the Election of the Informer or Proſecutor, to exhibit or lay his Information before any Two or more ſuch particular Juſtices, as are not very remote from the Place where ſuch Offence is committed. But after he hath ſo exhibited his Information before any Two or more particular Juſtices of the Peace, the hearing and determining ſuch particular Information will thereby be veſted in, and confined to thoſe particular Juſtices; becauſe the particular Juſtices, before whom ſuch Information is ſo exhibited, do thereupon make a Record of ſuch the exhibiting thereof (that is) they make or cauſe to be made an Entry in Writing, That on ſuch a Day, and in ſuch a Year, and at ſuch a Place, the Informer came before them (naming and ſetting down in ſuch Entry, the Names of ſuch Two or more Juſtices) and exhibited

exhibited his Information before them; and that they (ſuch particular Juſtices) did thereupon iſſue out their Precept and Summons for the Defendant, in ſuch Information, to appear before them, to Anſwer to, and to make his Defence againſt ſuch Information: And a Record thus made by thoſe Juſtices, will ſhew that the hearing and determining of the Offence mentioned in ſuch Information, doth thereby become ſo appropriated to thoſe particular Juſtices, before whom, *&c.* that no other Juſtices can or ought to join with them therein.

If the Two Juſtices, before whom ſuch Information is ſo exhibited, upon hearing the Evidence do happen to differ in their Judgment; and if one be for Convicting, and the other for Acquitting; and if neither being able to convince the other, both ſhould deſire a third Juſtice to join with them, in order to have a Determination, yet ſuch third Juſtice cannot regularly ſo join with them in the determining upon ſuch Information ſo exhibited before them Two only; becauſe the Record of that Proceeding being, as before is mentioned, before them Two only, if any other ſhould take upon him to join with them therein, ſuch other would then take upon him to judge of, and in a Matter which is not regularly before him: But in ſuch caſe the Informer or Proſecutor may enter, or cauſe to be entered, a *Noli proſequi* (that is) he may in Writing or otherwiſe declare, That he will not proceed any further upon ſuch his Information exhibited before ſuch Two Juſtices, ſaving to himſelf a Right of exhibiting of another Information for that Offence; and then the Two Juſtices before whom, *&c.* may thereupon

make a Record of ſuch his Declaration and relinquiſhing the farther Proceeding on that Information, which thereby will be diſcharged, and the Caſe will then be as if no Information had been exhibited; and then, if the three Months are not expired, the Informer may exhibit the like Information before Two or Three other Juſtices, or before the firſt Two, and One or Two more joined with them: But ſo long as the Cauſe ſtands upon the Foot of the firſt Information, exhibited before Two Juſtices only, no other Juſtices can join with them in giving Judgment thereupon. But Note, that if ſuch firſt Information is ſo diſcontinued or withdrawn, it will not afterwards be of any uſe to ſave the three Months limited for the laying theſe Informations.

But if any ſhall ſtill inſiſt that the County-Juſtices have not in theſe Caſes ſuch ample Juriſdiction as is before aſſerted, it is ſuppoſed, That the printed Opinions of Mr. Attorney-General, and Mr. Sollicitor-General, will give Satisfaction to any that are diſpoſed to be convinced; therefore ſee thoſe Opinions: And Note, that as before hath been ſaid, the County-Juſtices may meet to hear and determine theſe Offences at, and in ſuch Corporations as are in, and part of the County, and it will be beſt to hear them in ſuch Corporations.

This Act of Parliament, ſo far as it relates to the Juriſdiction of Juſtices of the Peace in theſe Cauſes, is in Fact a beneficial Law both to the Crown and to the Subject. For, if inſtead of this ſummary Way of proceeding, all ſuch Proſecutions, as by this Act may be before Juſtices of the Peace, had been left to the uſual Ways

of

of proceeding in the ſuperior Courts of Juſtice, the neceſſary Expences of ſuch Proſecutions would very much have leſſened the neat Produce of theſe Revennes; and the neceſſary Attendance, Loſs of Time and Expences, in defending ſuch Proſecutions, would in many Caſes have been a far greater Tax than the Duties themſelves, and would ſometimes have been the utter Ruine of many Defendants: All which is or may be ſaved by this ſummary Way of Proceeding, by which theſe Suits and Diſputes are ended and determined with little Trouble and leſs Expence; and therefore the Conſtruction of this Act of Parliament, ſo far as it relates to the Juriſdiction of Juſtices of the Peace in theſe Caſes, ought to be as favourable and as extenſive as in the Caſe of any other beneficial Laws.

But withal it muſt be conſidered, That the Juriſdiction of the Juſtices is in theſe Caſes pointed out and limited by the Words of the ſaid Act, *viz.* they are to hear and determine *Forfeitures and Offences*; and therefore Informations for not duly paying theſe Duties muſt be laid for the Forfeiture in ſuch Caſes, *viz.* for double the Value of ſuch Duties as are in Arrear, and cannot be laid before Juſtices of the Peace for the ſingle Value of ſuch Duties ſo in Arrear.

The Forfeitures upon Inn-keepers, Ale-houſe-keepers or Victuallers, for Selling Beer or Ale any otherwiſe than by a full Ale Quart, or Ale Pint, ſized or equalled unto the Standard, may be heard by One or more Juſtice or Juſtices of the Peace of the County, City, or Place where ſuch Offence ſhall be committed, 11 & 12 *W.* III.

Cap.

Cap. 15. Sect. 8. Entry-Book, Fol. 248. which Act having given this Jurisdiction concerning false Measures to the Justices, either of the County, City, or Place the Forfeitures and Offences for using false Measures in Corporations have been determined by the County-Justices.

CHAP.

CHAP. II.

Of laying and hearing Informations for Offences againſt the Laws of Exciſe in the proper County where ſuch Offences happen.

THE ſaid Act of 12 *Car.* II. doth not expreſly direct, That the Forfeitures and Offences therein mentioned, ſhould be heard and determined *(in)* the reſpective County or City where the ſame ſhall happen to be committed.

But the Act of 15 *Car.* II. *Cap.* 11. *Sect.* 22. having enacted, *That all Differences, Appeals and Complaints, that ſhall happen and ariſe between Party and Party, in order to the Payment of the Duty of Exciſe, ſhall be heard and determined in the proper County, or in the ſeveral Ridings and Diviſions of* Yorkſhire *and* Lincolnſhire, *where they ſhall ariſe, and not elſewhere.* All Forfeitures and Offences againſt theſe Laws, muſt now be heard and determined in the proper County where they happen to be committed.

Here it may be obſerved, That moſt Cities are Counties of themſelves, ſeparate and diſtinct from the County or Counties ſurrounding or adjoining to them: As, *London* is a County of it ſelf, and is no part of the County of *Middleſex*; and the like may be obſerved concerning ſome Towns; as particularly, the Town of *Pool*, tho' incompaſſed by the County of *Dorſet*, is really a County of it ſelf, ſeparate and diſtinct from the County of *Dorſet*; ſo likewiſe the Towns of *Nottingham*,

tingham, Southampton, New-Caſtle upon *Tyne, Kingſton* upon *Hull*, and Town of *Carmarthen*, are each of them Counties of themſelves, ſeparate and diſtinct from the ſeveral Counties ſurrounding or adjoining to them. The Borough of *Leiceſter* is diſtinct from the reſt of that County; and Forfeitures and Offences againſt theſe Laws, happening within any of theſe Towns, muſt be heard and determined in theſe Towns reſpectively, but not by reaſon either of their being Corporations, or of any excluding Clauſes in any of their Charters, but becauſe they are diſtinct Counties of themſelves, ſeparate from the County ſurrounding or adjoyning to them.

But tho' (as before is mentioned) ſome Cities are Counties of themſelves, yet all Cities are not ſo; but ſome belong to, and are part of the reſpective Counties in which they are ſituate; as, *Weſtminſter* is in, and part of the County of *Middleſex*; ſo the Cities of *Hereford*, *Oxford* and *Durham*, are in, and are part of the reſpective Counties of *Hereford*, *Oxford* and *Durham*. The City of *Carliſle* is in, and part of the County of *Cumberland*; and the City of *Rocheſter* is in, and part of the County of *Kent*: And for Direction in this Particular, it may be obſerved as a ſtanding Rule, That ſuch Cities or Towns as have a Sheriff or Sheriffs of their own, ſeparate and diſtinct from the County-Sheriff, are Counties of themſelves; but ſuch Cities and Towns as have no Sheriff or Sheriffs of their own, are in, and part of the reſpective Counties where they are ſituate.

Corporation-Towns (except ſuch as have a Sheriff or Sheriffs of their own) are in, and part of the reſpective Counties where they are ſituate; and

and (as to the Laws of Excise) are within the Jurisdiction of the Justices of those respective Counties where such Towns are situate.

It may be further observed, That tho' (as before is mentioned) several Cities are Counties of themselves, distinct from the respective neighbouring Counties, yet particular Places within the Compass and Limits of such Cities, are notwithstanding part of such neighbouring Counties; as, the Castle of *York* is part of the County of *York*; the Castle of *Norwich* is part of the County of *Norfolk*; the Castle of *Lincoln* is part of the County of *Lincoln*; the Castle of *Exeter* is part of the County of *Devon*; that part of *Glocester*, where the Assizes for that County are held, is part of the County of *Glocester*, and the like of *Worcester*; and therefore the Justices of the Peace of the County of *Norfolk*, may at the Castle of *Norwich* hear and determine Offences against the Laws of Excise, happening to have been done in the County of *Norfolk*; and the like at the Castle of *Exeter*, tho' the Offence happen to be committed in the County of *Devon*, and the like may be done in other like Cases.

The County of *York*, as to some Purposes, is divided into three Ridings, *viz.* the *East*, *West* and *North-Ridings*; and in like manner the County of *Lincoln*, as to some Purposes, is divided into Three Divisions, *viz.* *Lindsey*, *Kesteven* and *Holland*; and the before-mentioned Act having directed, that Differences and Complaints relating to the Duties of Excise shall be heard and determined in the respective Ridings and Divisions of the said Two Counties, Forfeitures and Offences against these Laws, committed in any

of

of the ſaid Ridings or Diviſions, ought to be heard and determined in the proper and reſpective Riding or Diviſion where ſuch Offence ſhall happen: But the ſaid Act of Parliament not mentioning any other Diviſions in any other Counties, what is therein mentioned about the Diviſions of theſe Two particular Counties, cannot be applied to any other Counties, but only to theſe Two Counties particularly named.

If a Common Brewer, Diſtiller or Maltſter, or other Perſon liable to the Duties of Exciſe, ſhould happen to have a Dwelling-Houſe in one County, and a Brew-Houſe, Diſtilling-Houſe, or Malt-Houſe, or the like, in another County; and if at ſuch Brew-Houſe, Diſtilling-Houſe, or Malt-Houſe, any Fact ſhould be done contrary to any Clauſe in any of the Exciſe-Acts, the Information muſt in ſuch Caſe be laid in the County where ſuch Brew-Houſe, Diſtilling-Houſe, or Malt-Houſe is, before Two or more Juſtices of that County; and when they have granted their Summons upon ſuch Information, ſuch Summons may be ſerved upon the Defendant in the County where he liveth, or in any other County; and if the Defendant, tho' ſerved therewith, doth not appear upon ſuch Summons, Judgment may be given againſt him, as well as if he had lived in the ſame County where ſuch Information is laid.

CHAP.

CHAP. III.

Of the Time limited for the laying these Informations before Justices of the Peace, viz. of the Three Months limited for the laying thereof; and from what Time, and how the said Three Months are to be computed.

THE Prosecutions before Justices of the Peace, for Offences against the Laws of Excise, are not by the said first mentioned Act of 12 *Car.* II. *Cap.* 24. limited or restrained to be commenced in any set or particular Time.

But by the Act of 1 *W. & M. Cap.* 24. *Sect.* 16. *Excise-Book, Fol.* 110. no Information is to be prosecuted against a Common Brewer, *&c.* for any mis-entry, unless it be laid or entered before such Persons appointed to determine the same (*viz.* the Justices of the Peace) within Three Months next after every such Offence committed. And in the Act of 12 *&* 13 *W.* III. *Cap.* 12. *Sect.* 17. *Excise-Book, Fol.* 261. there is the like Clause for restraining and limiting the Time for laying Informations against Common Distillers and Vinegar-Makers for such mis-entries, *&c.*

The several and respective Acts for laying Duties upon other Manufactures, *viz.* upon Sweets, Malt, Candles, Hops, Soap, Paper, Calicoes, Linnens and Stuffs, printed, painted, stained or dyed; and upon Starch; and upon Gilt

and

and Silver Wire, have likewiſe in them ſeveral Clauſes for ſeveral Penalties in Caſes of omitting or committing ſeveral and reſpective Acts relating to thoſe Manufactures; and in all and every of the ſaid Acts, there are Clauſes whereby for the recovering thoſe reſpective Penalties and Forfeitures, the ſaid ſeveral Acts do refer not only to the ſaid firſt-mentioned Act of 12 *Car.* II. but alſo to the other Acts and Laws of Exciſe, which were in Force at the reſpective Times of granting the ſaid reſpective Duties laſt mentioned; and the Duties and Penalties granted and impoſed by the ſaid laſt-mentioned Acts, being thereby appointed to be ſued for, and recovered according to the ſaid firſt-mentioned Act, and the other Acts of Exciſe then in Force, Informations before Juſtices of the Peace, relating to the ſaid laſt-mentioned Manufactures, ought in like manner to be laid and exhibited within Three Months next after the committing each reſpective Offence, for which ſuch Information ſhall happen to be laid or proſecuted.

But ſuch Three Months are not to be computed by Calendar or Almanack Months, but by Lunary Months of Four Weeks to a Month, and no more; according to which Computation, Eighty Four Days make up the Three Months: And therefore, if Informations of this kind are not laid before Juſtices of the Peace within ſuch Eighty Four Days next after the committing the Offence, they then come too late.

It will not be needful to give any further Direction from what Time the Three Months are to be computed, in Caſes where the Offence doth conſiſt in a ſingle Act done at one particular Time only, and not repeated or continued:

But

But in ſome other Caſes, where the Offence conſiſts in Acts either repeated or continued, it may not (perhaps) be ſo eaſie to know from what Time the Three Months are to be computed. As for Inſtance:

By the Acts for laying Duties upon Candles, ſuch Perſons as make Candles, not to Sell or make Profit of, but to be conſumed in their own private Families only, may make Compoſitions for the Duties of ſuch Candles ſo by them to be made, at the rate of Two Shillings a Year for every Head which at any time, during their Compoſition, ſhall be of their Family; and if, after ſuch Compoſition made, their Family happens to increaſe, by adding thereto One or more Perſon or Perſons, they in ſuch Caſe, at, or before the next Quarter-Day, ought to give Notice in Writing at the next Office of Exciſe of ſuch Perſon or Perſons ſo added to their Family; and if the giving ſuch Notice be neglected, ſuch Compounder, in ſuch Caſe, forfeits Five Pounds, and loſeth the Benefit of his Compoſition, and becomes liable to pay the ſame Duties for the Candles he afterwards makes, as are paid by the Common Chandlers and Traders in Candles.

Suppoſe then, that the Maſter of a Family on the Five and Twentieth of *March*, make a Compoſition for the Duties on Candles to be made and uſed in his own private Family, then conſiſting of Five Perſons only; and ſuppoſe, that tho' in *April* or *May* following, his Family is increaſed by the Addition of One or Two Perſons more, yet he don't give Notice thereof at, or before *Midſummer* then next following, but continues on the Foot of his firſt Compoſition, as if no Addition had been made to his Family; and

ſuppoſe this is not found out or diſcovered until after *Michaelmas* following, when it will be above Three Months ſince his Compoſition was firſt broken, and ſince he firſt became an Offender againſt this Law, yet nevertheleſs he after the ſaid *Michaelmas* may be proſecuted before Juſtices of the Peace for this Offence.

For in the firſt Place, the Three Months are not to be computed from the Time of taking into his Family ſuch additional Perſon or Perſons as aforeſaid, becauſe ſuch taking in ſuch additional Perſon or Perſons is no Offence: But his firſt Offence was, his not giving Notice at, or before the ſaid *Midſummer*, that he, ſince the preceding Quarter-Day, had taken ſuch Perſon or Perſons into his Family; and for that Offence, *viz.* the not giving ſuch Notice, an Information might have been laid againſt him within Three Months next after the ſaid *Midſummer*: But tho' by omitting then to lay ſuch Information, the laying an Information for the neglecting to give Notice on or before that particular Quarter-Day is loſt and gone, yet he is not to be permitted for ever afterwards to go on in repeated Breaches of this Law without ever being puniſhed for ſuch repeated Breaches thereof.

But on the contrary, for as much as the having between *Midſummer* and *Michaelmas* more Perſons of his Family than he had compounded for, and the not giving Notice at *Michaelmas* of ſuch Perſon or Perſons being added to his Family, is as much a Breach of this Law, as was his not giving Notice thereof at *Midſummer* aforeſaid, he at any Time within Three Months next after *Michaelmas*, may be proſecuted for not giving

ving Notice at *Michaelmas*, as well as he might have been within Three Months next after the ſaid *Midſummer*, for not then giving the like Notice, the one being as much a Breach of this Law as the other; and until ſuch Notice ſhall be given, the omitting at any other following Quarter-Day to give the like Notice, is, and will be a repeated Inſtance of an Offence of the very ſame Nature as the firſt; and until he has been once puniſhed for this Offence, he for omitting to give Notice at any other Quarter-Day, is, and will be liable to the very ſame Penalty and Proſecution as for the firſt; but he is to be but once puniſhed for one and the ſame Offence.

By the Exciſe-Acts, *No Common Diſtiller is to ſet up, make uſe of, or to alter any Waſh, Batch, Caſk, or other Veſſel, or any Still, for the making or keeping Waſh for Diſtillation, or of Low-Wines, without giving Notice thereof at the next Office of Exciſe, and ſoon to forfeit Twenty Pounds for every ſuch Caſk, Waſh, Batch, Copper, Still, or other Veſſel ſo ſet up, uſed or altered.*

Suppoſe then, That a Diſtiller ſets up and begins his Trade at *Lady-Day*, and then giveth due Notice of all the Stills he then has, and ſuppoſe that in a Week or Fortnight after he privately ſets up, and makes uſe of another Still, without giving any Notice thereof, and goes on uſing ſuch private Still, without being detected therein until *Michaelmas* following, and then, and not before this is found out.

If an Information be then laid againſt him before Juſtices of the Peace for ſuch the firſt ſetting up ſuch Still, ſuch Information will not be laid within the ſaid Three Months next after the

firſt ſetting up of ſuch Still, which, according to the Caſe before ſuppoſed, will then be Six Months before the laying ſuch Information: But if in the Caſe before ſuppoſed, the Information (inſtead of being laid for ſetting up of the ſaid Still) be laid (as it may be) for uſing the ſaid Still; and if it be proved, that at one or more Time or Times, within Three Months next before the laying ſuch Information, the Diſtiller made uſe of the ſaid Still, ſo ſet up as aforeſaid, ſuch Information will be good, and may be maintained, becauſe the Offence mentioned in ſuch Information, *viz.* the uſing ſuch Still will, in Fact, be within Three Months next before the laying ſuch Information: And the uſing ſuch Still without Notice, is as much a Breach of that Law, and as much a Forfeiture of the Twenty Pounds Penalty as the firſt ſetting up thereof; for the Words in the Act of Parliament in ſuch Caſe are in the Disjunctive, *viz. That no Common Diſtiller ſhall ſet up, make uſe of,* (or) *alter any Tun, Cask, Waſh, Batch, Copper, Still, or other Veſſel,* &c. ſo that the ſetting up, or the making uſe of, or the altering ſuch Still, *&c.* being (as they are) all different and diſtinct Acts, and the doing any one of them without Notice, being (as it is and will be) a Breach of the ſaid Law, an Information may be laid for any one of thoſe Acts, *viz. Either for the ſetting up, or for the making uſe of, or for the altering ſuch Still,* &c. *without Notice:* And foraſmuch as the proving at what particular Time ſuch Still was firſt ſet up, may be more difficult than to prove at what Time or Times ſuch Still hath been made uſe of, it will be much ſafer to lay ſuch Information for the making uſe of ſuch Still, *&c.*

without Notice, rather than for the ſetting up thereof without Notice.

There are other Offences which, in the Nature thereof, are continuing Offences: As for Inſtance;

If any Common Brewer, Victualler, or Retailer of Beer or Ale, hide, conceal, or convey away any Beer, Ale, or Worts, from the Sight and View of the Gauger, they reſpectively forfeit Twenty Shillings for every Barrel ſo hid, concealed, or conveyed away; And if Common Diſtillers, or Makers of Low-Wines, Spirits or Strong-Waters for Sale, hide, or conceal ſuch Low-Wines, Spirits, or Strong Waters, from the Sight and View of the Gauger, they forfeit Five Shillings for every Gallon ſo hid, concealed or conveyed away.

By the ſeveral and reſpective Acts relating to all other the reſpective Duties upon other Liquors, Goods and Manufactures, charged with like Duties, there are alſo reſpective Penalties for hiding and concealing ſuch Manufactures.

Now this Offence, by hiding, concealing, *&c.* doth not conſiſt barely in the firſt Act of hiding and concealing, at the particular Time when any Thing is at firſt ſo hid and concealed; but this Offence, in the Nature thereof, is a continuing Offence (that is) when any Thing is once hid and concealed, it remains ſo until it is either produced or diſcovered, or otherwiſe diſpoſed of: And therefore, if a Common Brewer, *&c.* ſhould on the Firſt Day of *May* hide, conceal, or convey away Two or Three Barrels of Drink, and afterwards keep the ſaid Drink thus hid until *Michaelmas* following; and if then, and not before, the ſaid Drink ſhould

be diſcovered and found actually hid and concealed until that Time, and thereupon an Information ſhould then be laid againſt ſuch Brewer, for ſuch hiding and concealing thereof, ſuch Information would be well, as to the Time of the laying thereof, and would be within the Three Months, notwithſtanding it would then be above Three Months from the firſt hiding, &c. thereof; becauſe whatever is once hid and concealed, and is kept and continued ſo hid and concealed, and is afterwards found and diſcovered ſo hid and concealed, is, and remains hid and concealed during all that Time; and in the Caſe before-ſuppoſed, the Brewer did as much hide and conceal ſuch Drink the very Day when the ſame was found ſo hid and concealed, as he did the firſt Day it was hid and concealed: For hiding and concealing any Thing, does not conſiſt barely in the firſt putting or laying ſuch Thing out of ſight, in this or that private Place; for ſuch putting or laying thereof is only the Means to hide and conceal it; but hiding and concealing conſiſteth in the keeping ſuch Thing undiſcovered; and therefore, until ſuch Drink was diſcovered, it was as much and as effectually hid and concealed, as it was the firſt Day when it was put or laid in ſuch private Place; and therefore ſuch Information, laid within Three Months next after ſuch finding and diſcovering ſuch Drink ſo hid and concealed, will be within Three Months next after the hiding and concealing thereof.

Other like Caſes and Inſtances might here be inſerted; but theſe which are already mentioned may be ſufficient to ſhew that the Three

Months

Months are not in all Cases to be computed from the particular Times when Informations might have been laid; and that altho' the first Opportunities of laying such Informations have been passed by, yet where the Offences are continuing, or do consist in repeated Acts, Informations may be maintained for such Offence continued or repeated, within Three Months next before the laying such Information.

CHAP. IV.

Of the Informer, or Perſon in whoſe Name theſe Informations may be laid and proſecuted.

THO' by the ſaid Acts relating to the ſaid Duties of Exciſe, it is enacted, *That all Forfeitures and Penalties, &c. therein mentioned, ſhall be Part to the Crown, and other Part to the Diſcoverer or Informer*; yet it will not be proper to make the Perſon or Perſons, who are the Finders out or Diſcoverers of Practices contrary to theſe Acts, Informer, or Informers, or to lay ſuch Information in his or their Name or Names, leſt thereby it ſhould happen, that there may be a Want of Evidence to prove the Offence laid in ſuch Information; for the ſame Perſon cannot be both Informer and Witneſs: And therefore theſe Informations ſhould be laid in the Name of the Collector, or of ſome other Perſon not concerned in the diſcovering or finding out the Offence for which ſuch Information is laid. But if the Collector himſelf happeneth to find out any Practice or Offence, for which an Information is to be laid, let ſuch Information be laid in the Name of the Superviſor, or of ſome ſuch other Perſon as is not concerned in ſuch Diſcovery, nor is to be produced or uſed as a Witneſs, to prove the Offence mentioned in ſuch Information, or any thing relating thereto.

CHAP.

CHAP. V.

Of the Juſtices Recording, or cauſing to be Recorded, the Time and Place of the laying Informations before them.

BY the firſt-mentioned Act of 12 *Car.* II. *Cap.* 24. *Sect.* 44. *Exciſe-Book, Fol.* 44. Juſtices of the Peace, *&c.* are authorized and ſtrictly injoyned and required, upon any Complaint or Information made or exhibited and brought of any Forfeiture made, or Offence committed, contrary to the ſaid Act, to ſummon the Party accuſed, and upon his Appearance or Contempt, to proceed to Examination of the Matter of Fact, *&c.*

By which it appeareth, That the Informer is to make the firſt Step, *viz.* He is to make his Complaint unto, or to exhibit his Information before Two or more Juſtices. But it not being ſaid, either by this or any other of the Acts of Parliament relating to theſe Proſecutions, that ſuch Complaint or Information muſt be in Writing; it therefore ſeemeth, That if an Informer make only a Paroll or Verbal Complaint and Information to Juſtices, ſuch Paroll or Verbal Complaint or Information, may at firſt be ſufficient: But in regard that whatever is afterwards done thereupon, will be and is Matter of Record; therefore not only the Matter of ſuch Complaint or Information, but alſo the Time and Place when and where the ſame is ſo exhibited, muſt be ſet down in Writing, or Recorded: And ſuch the

Recording

Recording thereof, muſt not be expreſſed in Words referring to any Time paſt, as that the Informer did complain, or did exhibit his Information, or by way of Recital, in this or the like manner, *viz.* Whereas the Proſecutor did complain, or hath complained, or the like, or in any other like Words, referring to any Time paſt; becauſe a Record made of any thing done at a Time paſt, before ſuch the Recording thereof, cannot be ſuppoſed to be ſo certainly true, as if what is done be recorded at the ſame Inſtant of Time when it is done. And therefore in Records regularly made, all the Proceedings are ſet down and expreſſed in Words of the Preſent Time and Tenſe: And ſo it is always done in the Courts of Record in *Weſtminſter-Hall*, in Cauſes there depending by Original Writs. The Plaintiff's Declaration, and the Defendant's Plea, and the Plaintiff's Replication, and the Judgment of the Court, are all expreſſed in Words of the Preſent Time and Tenſe, *viz.* The Plaintiff *doth* complain (not *did* complain); The Defendant *ſaith*, That he *is* not guilty, *&c.* (and not that the Defendant *did* ſay, That he *was* not guilty) And the Judgments of the Courts are expreſſed thus, *viz.* Therefore it *is* conſidered by the Court; and not thus, *viz.* Therefore it *was* conſidered by the Court. But when in the Courts of *Weſtminſter*, the ſerving of any Writ or Proceſs is mentioned and recorded, that is and muſt be expreſſed in Words of a Time paſt; as, That the Defendant *was* ſummoned, or that he *was* attached, *&c.* Becauſe ſuch ſummoning, *&c.* was at a Time paſt, before ſuch the Recording thereof: And in like manner, if the Proceedings in theſe Caſes ſhould be drawn up at full Length,

and

and the ſerving the Summons, and giving Notice to the Defendant, ſhould be fully ſet forth; ſuch ſerving the Summons, and giving Notice, muſt be expreſſed in Words of a Time paſt, *viz. That A. B. did Summon the Defendant, and did give to the Defendant Notice*, &c. becauſe the Service of ſuch Summons was at a Time paſt before ſuch recording thereof.

Here it may be obſerved, That this Recording, or making a Record of Proceedings in theſe Caſes before Juſtices of the Peace, is, in Conſideration of Law, the Act of the Juſtices, and not of the Proſecutor; for no Proſecutor is in any Court intruſted to Record his own Proſecution: But the recording the Proceedings in all Courts, is always eſteemed the Act of ſuch Court where ſuch Proſecution is: For when a Court of Record is created or erected, and Judges are intruſted and impowered to judge and determine upon Proſecutions there brought before them, they of conſequence are impowered and required to Record what is done before them; and what they Record thereof, is eſteemed ſo Sacred, that the Law doth not permit any Averment to be made againſt ſuch their Record, becauſe the making ſuch Records of ſuch Proceedings, being the Acts of the Court or Judges by and before whom they are recorded, it cannot be ſuppoſed that they will permit any thing to be recorded, but what is in all Points agreeable to Truth: But if the making ſuch Records of ſuch Proſecutions was permitted to be done by the Proſecutor, and if he was ſolely intruſted therewith, it might then be ſuppoſed, that in ſuch Records there might be inſerted what was for his Advantage, tho' the ſame was not true.

Since

Since therefore the recording these Informations, and of the Time and Place of the exhibiting and laying thereof, and of the Proceedings thereupon, is (as before has been mentioned) the Act and Record of the Justices, and not of the Prosecutor or Informer, it will be proper that the Records thereof be expressed and set down in Words, importing them to be the Acts of the Justices.

And therefore you will find the Precedents in these Cases expressed in the following Manner, *viz. That the Informer exhibiteth to us* A. B. *and* C. D. *Esqrs; Two of his Majesty's Justices,* &c. *and thereby informeth us,* &c. *and prayeth the Judgment of us, the said Justices,* &c. By all which it appeareth, That the Justices may, if they will, admit of a verbal Complaint or Information; but then it will be incumbent upon them to make a Record thereof, and of the Time and Place when and where such Complaint was so made; but to save them that Trouble, the Informer not only prepares his Information in Writing; but also by way of Preface thereto, makes a Memorandum of the Time and Place of the laying such his Information, leaving therein Blanks for the inserting the Names of the Justices before whom he is to lay it, and for inserting the Day, and Month, and the Town, when and where it is laid; and when those Blanks are filled up by the Direction or Consent of the Justices, then it becomes a Record made by them.

The mentioning the Name of the Town where the Information is laid, is, that it may appear, That the Prosecution was in the proper County; and therefore, tho' it may happen, that for the laying the Information, the Prosecutor may

be

be obliged to attend one Juſtice in one Town, and another in another Town; it muſt not be mentioned, that the Information was laid at both Towns, for that would be abſurd; but in ſuch, and in all theſe Caſes, it is uſual to alledge and expreſs, that the Information is laid at the Town where the Hearing is intended to be.

CHAP.

CHAP. VI.

Of Summoning the Party accused: And of the Notice to be given within a Week after the Laying and Entring an Information.

THE First Act of Parliament relating to these Proceedings, directs, That the Party accused, be summoned; but doth not appoint or limit any particular Time for the making out, or for the serving of such Summons.

The Act of 1 *W. & M. Cap.* 24. *Sect.* 16. *Excise-Book Fol.* 110. And also the Act of 12 & 13 *W.* III. *Cap.* 11. *Sect.* 17. *Excise-Book, Fol.* 261. do both direct, That within a Week after laying an Information, Notice thereof in Writing be given to the Person or Persons against whom such Information shall be laid, or left at their Dwelling-Houses; by which the Time for summoning and giving Notice, is now limited and appointed not to exceed a Week, next after the laying of the Information; which Week is to be computed from the Day when the Information is laid, as the same is mentioned in the Recording of the Time and Place of the laying thereof; and therefore the summoning or giving Notice to the Defendant or Party accused, should not be delayed, but ought to be done soon after the exhibiting the Information.

Here it may be observed, That tho' the before-mentioned Acts differ in the wording thereof, *viz.* the said first-mentioned Act doth require,

That

That the Party accuſed, be *Summoned*; and the ſaid two other Acts require, That *Notice ſhall be given* to the Perſon or Perſons againſt whom ſuch Information ſhall be laid or left at their Dwelling-Houſes; yet the Senſe and Meaning of thoſe different Expreſſions, is the ſame; for there is no real Difference between ſummoning, and giving Notice. The Legal Senſe and Meaning of Summoning, is giving Notice; and to Summon imports no more, than to give Notice: And tho' the firſt Act don't particularly ſay, That the Summons may be either to the Party perſonally, or left for him at his Houſe; yet according to the Common Law of *England*, a Summons made at the Dwelling-Houſe of the Perſon to be ſummoned, whilſt any of the Family are there, hath always been allowed to be a ſufficient Summons in Law: And by the Act of 15 *Car.* II. *Cap.* 12. *Sect.* 2. *Exciſe-Book, Fol.* 81. ſuch leaving the Summons at the Defendant's Houſe, with his Wife or Servant, is declared to be as ſufficient, as if delivered to the Defendant himſelf, and by the Common Law is a ſufficient Summons, 1 *Inſtitutes, Fol.* 158. *B.*

Such a Summons or Notice is generally ſigned by the Juſtices at the ſame Time when the Information is laid, and therefore may properly be dated the ſame Day as the Information is exhibited. It will be ſufficient in the Summons to expreſs the Offence ſhortly and in general Words, without mentioning ſeveral of the Particulars, which may be proper or neceſſary to be expreſſed and ſet forth in the Information; the Intent of the Summons being only to give the Defendant Warning what he is proſecuted for, and is to anſwer to.

But

But it will be neceſſary in the Summons to mention on what particular Day, and at what particular Hour in that Day, and at what particular Houſe or Place, the Defendant is to attend: All which ought to be fully and plainly expreſſed in the Summons or Notice.

After the Summons or Notice is drawn up in the manner before-directed, and is ſigned by the Juſtices; then let a Copy be made thereof, and of the Juſtices Names thereto, and let ſuch Copy be examined and compared with the original Summons, ſigned by the Juſtices, and be made to agree therewith; and then let ſuch Copy be delivered to the Defendant himſelf, or left for him at his Dwelling-Houſe, either with his Wife or Servant; and if ſo left, then let the Perſon with whom the ſame is ſo left, be acquainted with the Purport and Intent thereof, and let them be deſired to acquaint the Defendant therewith; And if the Perſon who ſo leaves ſuch Summons for the Defendant, either with his Wife or Servant, do afterwards, and before the Hearing, meet with the Defendant, it will be proper to ask the Defendant, If he received ſuch Summons? or to acquaint him, that ſuch Summons was ſo left for him either with his Wife or Servant, as the Fact may happen to be.

Since the leaving ſuch Summons at the Defendant's Houſe, with his Wife or Servant, is ſufficient, let not the doing thereof be delayed, that the Defendant may not have any Pretence to complain of being ſurprized for want of timely Notice.

CHAP.

CHAP. VII.

Of Hearings upon Informations laid before Juſtices of the Peace. And of the Proof and Evidence proper to be given and produced on ſuch Hearings.

IF at the Time and Place appointed for the Hearing and Determining the Matter of Fact contained in an Information, the Defendant doth appear, and doth voluntarily confeſs ſuch Fact or Facts, Judgment muſt then be given upon ſuch his Confeſſion: But if the Defendant, though duly ſummoned, doth not appear at the Time and Place appointed by ſuch Summons; or if he doth appear, and doth alſo plead, That he is not guilty of the Fact or Facts in ſuch Information mentioned; then, and in either of the ſaid Caſes, it will lie upon the Informer to maintain his Information by Proof and Evidence, which in this, as well as in other Caſes, (according to the Courſe of Law) muſt always be upon Oath. And therefore if a Witneſs duly ſworn, doth give Evidence, That another Perſon told him ſo and ſo, or that he heard another ſay ſo or ſo, whatever it be that ſuch Witneſs ſo repeats, as ſaid by another, goes for nothing, and is not to be allowed as Evidence or Proof; becauſe it is not upon Oath (that is) tho' ſuch Witneſs doth upon his Oath repeat what was ſo ſaid in his Hearing, yet the Perſon who ſaid that which is ſo repeated, was not upon Oath when he ſaid what is ſo repeated; ſo that what is ſo repeated, inſtead of being Legal

Proof or Evidence, is, in truth, nothing but a repeating upon Oath what was ſaid in common Diſcourſe, which might not be true, not being ſpoken upon Oath, and therefore is not to be depended upon: Nay, though a Witneſs ſhould upon his Oath repeat what another, when duly ſworn at a former Trial or Hearing, had ſaid upon his Oath, even that is not to be allowed to be given in Evidence, if the Perſon who originally ſaid what is ſo repeated, be living at the Time when the ſame is ſo repeated; becauſe by another Rule of Law, Evidence of a lower or meaner Degree ſhall not be admitted, when Evidence of an higher or better Degree may be had. But if the original Speaker of what is ſo repeated be living, then he might be produced to give his own Evidence, which is better and of an higher Degree than a Repetition thereof from any other Perſon: But a Repetition of what the Defendant himſelf hath been heard to ſay, hath been always admitted and allowed to be given in Evidence, becauſe ſuch Repetition is the beſt Evidence which can be had of what a Defendant ſaith; for he himſelf cannot be compelled to give Evidence againſt himſelf.

But you are to underſtand, that it will not be neceſſary to prove every Particular which is mentioned in the Information, in the Manner and Circumſtances, or in the Degree, or Proportion, or Number of Inſtances, as ſuch Particulars are or may happen to be mentioned in ſuch Information.

For there are ſome Things both proper and neceſſary to be mentioned in Informations, of which it will not be proper to require the Witneſſes to ſpeak or depoſe: As in an Information

for Hiding and Concealing, *&c.* it will be both proper and neceſſary to mention, That the Defendant fraudulently, and with Intent to deceive, *&c.* did hide and conceal, *&c.* But it will not be proper or fit that the Witneſs in ſuch Caſe ſhould depoſe, or that ſuch Witneſs ſhould be required to depoſe, Whether ſuch Hiding and Concealing was done fraudulently, and with Intent to deceive; for that would be to require the Witneſs to ſwear to the Intention of the Defendant, and would in Effect make the Witneſs a Judge of the Defendant's Intention; which is not the Province or Buſineſs of the Witneſs, or what either Law or Reaſon doth allow to, or expect from a Witneſs. But the Province and Buſineſs of the Witneſs, is truly to relate the Fact, and the Circumſtances thereof, and from thence the Juſtices are to judge and determine both of the Offence and of the Fraud. But withal, it is to be underſtood, That if ſufficient Teſtimony be given of a Fact manifeſtly againſt the Letter and Meaning of a Law, the Juſtices muſt intend and judge it to have been done fraudulently, unleſs the Defendant do make the contrary to appear by manifeſt and plain Proof.

Other Things alſo, which are mentioned by way of Inference or Concluſion, from Premiſes before alledged, are not expected to be proved. As where in an Information it is ſaid to this or the like Effect, *viz.* Whereby His Majeſty was much defrauded, *&c.* or the like; it is not to be expected, that Evidence ſhould be given, or Proof made, that His Majeſty was actually defrauded in the very Inſtance then in Diſpute; becauſe it is moſt likely, that the Diſcovery upon which ſuch Information is brought, did in that

particular Inſtance prevent ſuch defrauding. But if it ſhould be conſtrued to be abſolutely neceſſary in ſuch Caſe, to prove ſuch defrauding, becauſe mention thereof is made in the Information, ſuch Conſtruction would make it neceſſary to be conſenting to a Fraud, in order to be capable of being a Witneſs to prove ſuch Fraud. But though ſuch Perſons as are conſenting to, or aiding in ſuch Frauds, are and may be in ſuch Caſes made Uſe of as Witneſſes, yet it is not a neceſſary Qualification for a Witneſs, that he ſhould be a Partaker in the Guilt he is to prove; for ſurely, an unblemiſhed Perſon is (at the leaſt) as good a Witneſs as one concerned in the Fraud.

There are other Things, which though they muſt be proved, yet it will not be neceſſary that they ſhould be proved in the particular manner, and exactly according to all and every the Circumſtances relating thereto, as they may happen to be expreſſed or mentioned in ſuch Information; becauſe a different Conſideration and Regard ought to be had to that which is the main Thing in Queſtion, and to ſuch other Things as are only Collateral, or but Circumſtances relating thereto.

Whatever is thus meerly circumſtantial, ought not to be conſidered or regarded ſo much as that which is the Subſtance or Eſſence of the Fact or Offence in queſtion, or (if you will) the Fact or Offence it ſelf. And here you are to underſtand, That though in the mentioning in an Information the committing of any Fact or Offence, the Time and Place of committing thereof, is uſually expreſſed to have been done on ſuch a particular Day, and at ſuch a particular Place,

Place, mentioned in ſuch Information; yet theſe, *viz.* the particular Day or Place ſo mentioned (generally ſpeaking) are only circumſtantial, and conſequently not neceſſary to be proved exactly as they may happen to be mentioned in ſuch Information.

And, firſt, as to the particular Day on which an Offence is alledged or mentioned to have been committed, it is a General Rule, That ſuch particular Day, ſo mentioned, is not material (that is) if an Offence be committed, it will not (generally ſpeaking) be material, whether it was committed on the Firſt, Fifth or Tenth Day of this or that Month, or indeed on what particular Day in ſuch Month it was done, nor whether it was on *Monday* or *Wedneſday*, or on what other Day of the Week (that is) the committing ſuch Offence on the one Day of the Month, or on another; or on the one Day of a Week, or on another, doth not any way aggravate or leſſen ſuch Offence; and ſo far the particular Day may truly be ſaid not to be material.

But yet in Caſes where the Witneſſes have proved the Fact or Offence to have been committed on ſome other Day, different from the particular Day mentioned in the Information, or could not be poſitive on what particular Day the Offence was committed, it hath been objected, That ſuch Proof was not ſufficient to maintain ſuch Information; and that therefore the Defendant ought, in ſuch Caſe to be acquitted; and the rather, becauſe otherwiſe Defendants would be under great Hardſhips, and would often be ſurprized and prevented in making ſuch Defence as they might have done, if

the right Day had been mentioned in the Information. But notwithstanding such Objections, yet if such other Day be within Three Months next before laying such Information, the Judgment in such Case ought to be for the Informer; for the mentioning in an Information, that an Offence was committed on such a particular Day, is only to comply with the Forms required by Law in such Proceedings: But it never was intended, that the Prosecutor should thereby be tied down, and obliged to prove the Offence committed on that particular Day, or that otherwise the Defendant should be acquitted; that would be shewing a greater regard to a bare Circumstance than to the Thing it self.

Besides, the known Course and Practice at all Tryals, at the Assizes and Sessions, and elsewhere, being directly contrary, it cannot be supposed that any Defendant can be so misguided, as to fancy he is to defend himself as to such particular Day only, or that any Defendant can by such Mistake be induced to neglect preparing to make all the Defence he can: But if in any Case it should so happen, yet it will not be just or fit that the settled Course and Practice in such Cases should be altered, to comply with the Mistake of such particular Defendant, especially since such Mistake (if ever it should happen) may be better helped another way, viz. If when a Prosecutor has proved an Offence committed, on a Day different from the Day mentioned in the Information, the Defendant in such Case really hath any good Proof to contradict or answer the Prosecutor's Proof, but hath not his Witnesses then ready, it will be in the Power of the Justices, in such Case, to allow

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and appoint some farther Day for the hearing those Witnesses; and if the Justices, in such Case, do allow such farther Time, that will fully answer all Pretence of being surprized. But if, on the other hand, Defendants are to be acquitted in all Cases where the Prosecutors do not prove the Offence to have been committed on the particular Day mentioned in the Information, the Difficulties upon Prosecutors will be insuperable.

For it should be considered, That Prosecutors are not allowed to be Witnesses for themselves, but must by other Witnesses prove the Facts on which they ground their Prosecutions; and in many Cases it is not in the Power of the Prosecutors, or of such Witnesses, to remember exactly the particular Day when a Fact or Offence was done or committed, so as to be able to be positive that it was done on such a particular Day of the Month, for all Persons (especially ordinary labouring Men in the Country) don't keep their Accounts of Time by the Names of the Calendar Months; but some reckon from the Seasons of the Year, as Spring and Fall, *&c.* others from the Seasons of Husbandry, as the different Seed-times or Harvest-times; and others by Country-Wakes and Fairs, and thereby can ascertain the Times they speak of, as well as if they named the particular Month and Day in that Month: But if none were to be admitted for Witnesses, but such as speak to particular Days in this or that Month, great part of the labouring People in the Countries would be rendered incapable of proving the Truth, which surely cannot be thought agreeable to any Course or Method of Justice; but on the contrary would

manifeſtly tend to the preventing and obſtructing the attaining of Juſtice, as will appear by the following Inſtances.

Suppoſe that an Action being brought for Money lent, the Plaintiff (to comply with the Form required by Law) doth in his Declaration alledge, that the Money was lent on ſome particular Day expreſſed in ſuch his Declaration; and ſuppoſe that upon the Defendant's pleading to ſuch Declaration, the Cauſe cometh to a Tryal, where the Plantiff's Witneſſes fully prove the lending the Money; but when they are asked whether they can poſitively ſay, it was lent on the particular Day mentioned in ſuch Declaration, they cannot ſay it was: Or ſuppoſe they (as the Truth may very well be) do own that they do not remember on what particular Day the Money was lent, but that it was about ſuch a time: Nay, ſuppoſe yet further, That in ſuch a Caſe the Witneſſes do all particularly remember, that the Money was lent on ſome other particular Day, quite different from the Day mentioned in the Declaration, can any one in his own Reaſon think, that in any of theſe Caſes it would be agreeable to common Juſtice, to acquit the Defendant of that Action; or that the Plaintiff ſhould be obliged to become Non-ſuit in that Cauſe, and be put to the Charge and Trouble of bringing a new Action? Surely it muſt in ſuch Caſe be thought much more agreeable to Reaſon and Juſtice, that the mentioning in the Declaration a particular Day (as to the Juſtice of the Matter in Queſtion) ſhould be looked upon as Matter of Form, and meerly as a Circumſtance not of any Conſequence, or material, as to the Right or Juſtice of the Matter

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in Queſtion; for whether the Money was lent on the very Day mentioned in the Declaration, or on ſome other Day, yet ſtill if it was really lent, it ought to be repaid; and tho' in ſuch Caſe, the mentioning in ſuch Declaration a particular Day may be, and is agreeable to the Forms of Law, yet the confining and tying down a Plaintiff in ſuch Caſe to ſuch particular Proof, would not be agreeable to Right or Juſtice, but would manifeſtly tend to the preventing and hindering the obtaining Juſtice in ſuch Caſe.

But it may be ſaid, That tho' Plaintiffs may well be allowed to prove their Debts on ſome other Day, different from the particular Day mentioned in their Declarations, in Actions and Suits for juſt Debts or on Contracts, yet there is a great difference between ſuch Actions, and Informations on Penal Laws; and that therefore a Diſtinction ought to be made between the one and the other, and the one ought to be favoured more than the other, and the like, *&c.*

If indeed not holding and obliging ſuch Plaintiff to an exact Proof on the particular Day mentioned in ſuch Declaration were Matter of Favour only, there would then be Reaſon for making ſuch Diſtinction: But if inſtead of being a Favour, it is in Truth nothing more than down-right Juſtice, then there will be no Reaſon for making ſuch Diſtinction.

It will not be denied, but that common Juſtice doth require, That all Diſputes and Matters in Difference ariſing, as well upon Proſecutions on penal Laws, as in private Actions, ſhould not only be adjudged and determined, but ſhould be adjudged

adjudged and determined ſo, and in ſuch manner, that a final End and Concluſion be made thereof, and ſo as that there may not remain any Ground or Pretence ever to bring that particular Matter in diſpute again; and ſuch Determination will ſurely be more for the Honour of the Judges in ſuch Caſes, and for the Benefit of the Parties, than ſuch a Determination or Adjudication, as only determines the preſent Proſecution or Suit, and doth not at all determine the Matter in queſtion, but on the contrary, leaves that in the very ſame Condition it was before, and altogether undetermined as to the Merits thereof; ſo that there remains the very ſame Reaſons and Motives for the Parties to vex and harraſs one another with freſh Proſecutions and Suits as there was at firſt. Certainly, ſuch a Determination as this, is but a very imperfect Inſtance of the Execution of Juſtice, and is what ſhould be rather avoided than coveted.

But if the Law ſhould be apprehended to be, that though the Proſecutor or Plaintiff doth fully prove that which is the Ground and Foundation of his Proſecution; yet if becauſe his Witneſſes do prove the Fact or Offence to have been committed on ſome other Day, different from the particular Day mentioned in his Information or Declaration; the Judgment muſt in ſuch Caſe be given againſt him for no other Reaſon, than meerly on account of the Difference in the Days: Such Determination and Judgment will leave the Proſecutor at Liberty to begin a new Proſecution, and to lay a ſecond Information for the very ſame Fact and Offence. And if in ſuch his ſecond Information, he takes care to have the right Day mentioned, and if his Witneſs do fully

fully prove the Fact to have been done on that Day; he then must and will recover upon such his second Information, that which might have been recovered upon his first. But would this Method be for the Advancement of Justice, or for the Benefit of either of the contending Parties, the Prosecutor will have had the Trouble of Two several Prosecutions, when one would have served, and the Defendant will have had the Trouble of twice defending that, which might have been determined at once; and at the End of these Two Prosecutions, there is the same Judgment against him, as might have been upon the first. But upon the whole Matter, can this be thought to have been any Ease or Convenience even to the Defendant?

Oh! but when he was acquitted upon the first Prosecution, there was a Chance, at least, that the Prosecutor might not have commenced a second Prosecution; or, as it may happen, the Time of committing the Offence, may then be so far elapsed, that it may be too late to lay any new Information. In either of which Cases, an Acquittal would have proved Final; and therefore, since both in the one Case, and in the other, the holding Prosecutors strictly to prove Facts and Offences on the very particular Days mentioned in Informations, may accidentally baffle and discourage a just Prosecution, and may consequently be the Occasion or Means whereby Persons really guilty, may escape due Punishment; therefore all Prosecutors ought to be held strictly to prove Facts and Offences to have been done on the particular Days in their Informations: But surely this, or the like, is too grossly partial in Favour of Defendants, to be

said

ſaid or done by Juſtices, who being in theſe Caſes Judges, are not ſo to behave, as may be moſt conducive to the Acquitting all Defendants, or as may put all Difficulties and Diſcouragements upon Proſecutors; but are to act indifferently and impartially between the one and the other, and to be as ready to convict, upon plain and ſufficient Proof, as to acquit for want thereof.

It is hoped that by what has been already ſaid, it doth appear, That the allowing the proving of Offences on Days or at Times different from the particular Days mentioned in Informations, is not Matter of Favour, but is the Way and Means to do Juſtice between the Parties; ſince, on the other hand, the confining and holding Proſecutors to prove Facts and Offences to have been done on the particular Days mentioned in Informations inſtead of being conducive to the giving ſuch Judgment as may be final and concluſive, is the ready way to lay Foundations, for new Proſecutions; and that inſtead of being the Means or Way to judge and determine according to the true Merits and Juſtice of the Matter in queſtion, it plainly appears to tend directly to the Obſtruction of Juſtice, and can at beſt ſerve only to prevent the arriving at that which is the real Truth and Juſtice of the Matters in Queſtion; it is therefore ſuppoſed that it will not be thought agreeable either to Law or Juſtice, to hold or oblige Proſecutors ſtrictly to prove Facts or Offences to have been done or committed on the particular Days mentioned in Informations.

But

But if any who are acquainted with the Law-Books ſhould yet think the particular Day mentioned in an Information to be material, let them look the following Books, *viz.* *Lord* Coke's 2d. *Inſtitutes*, Fol. 318, 319. And his 3d. *Inſtitutes*, Fol. 230. And *Lord* Hales's *Pleas of the Crown*, Title *Evidence*, Fol. 264. where they will find, that even in Indictments, the particular Day is not material. And in *Brooks's Abridgment*, Title *Jour & jour en Court Placito* 39; and Title *Travers Placito* 54, and 134; and Title *Treſpaſs Placito* 106, 191. In all which Places they will find that a particular Day mentioned in a Declaration or the like, is not material.

But though a particular Day is not material, yet a particular Time in many Caſes is and will be very material; and to ſhew the Difference between a particular Day and a particular Time, take the following Inſtance, *viz.* The Owner of Cattle, which have treſpaſſed in his Neighbours Lands, doth afterwards make Satisfaction to the Owner of the Land for ſuch Treſpaſs; but notwithſtanding ſuch Satisfaction, ſuch Owner of the Land brings his Action for the Treſpaſs; thoſe who are Witneſſes both of the Treſpaſs and of the Satisfaction, may not perhaps remember the particular Day on which ſuch Treſpaſs was done, or the particular Day on which the Satisfaction was made; and yet they may well remember, and may be very certain and poſitive that the Satisfaction was made at a time after the Time when the Treſpaſs was committed; and if ſo, there is an end of that Action: And thus you will ſee the Difference between a particular Day and a particular Time.

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The Time material in Proſecutions, before Juſtices of the Peace, for Offences againſt the Laws of Exciſe, is the Three Months next before the laying or exhibiting the Information; for it hath already been obſerved, That no Information for any falſe or miſ-entry, or the like, may be proſecuted before Juſtices of the Peace, unleſs the ſame be exhibited within ſuch Three Months: But by what is already ſaid, it is moſt plain, that tho' a Witneſs may not be poſitive to a particular Day within the Three Months, yet he may be poſitive and clear that the Offence was committed within ſuch particular Time, *viz.* Within ſuch Three Months; and if ſo, then the particular Day will not be material; but if ſuch Witneſs is not certain that the Offence was committed within Three Months next before the laying ſuch Information, ſuch Evidence will not be ſufficient.

The Proof, as to ſome Things mentioned in ſome Informations, ought to be more particular than what is mentioned in ſuch Informations: As in Informations for not making true Entries of Beer and Ale brewed, or of Low-Wines or Spirits diſtilled, or of Malt or Candles, or other Manufactures made, it will not be neceſſary to mention, that ſuch a Quantity or Number of Barrels were brewed, or that ſuch a Quantity or Number of Gallons of Low-Wines and Spirits were diſtilled, or that ſo many Buſhels of Malt, or ſo many Pounds of Candles were made, &c. But it will be ſufficient to mention, That the Defendant, being a Common Brewer, brewed Strong Beer and Small Beer, or Ale and Small Beer; or that being a Common Diſtiller, he diſtilled Low-Wines and Spirits; or that he made

made Malt or Candles, &c. without expreſſing in the Information any Quantity, becauſe the Forfeiture is not in ſuch Caſes more or leſs, according, or in Proportion to the Quantity; but the Forfeiture for not making a true Entry, is the ſame Sum for a ſmall as for a greater Quantity; and therefore it would be to no Purpoſe, in ſuch Information, to inſert unneceſſary Particulars; but yet at the Hearing, Proof ought to be made that ſome of the ſaid Liquors or Manufactures were made, but the exact Quantity will not be material.

It is alſo the like in Informations, for not giving Notice of Veſſels, Utenſils, Rooms and Places, made uſe of for the making or keeping Liquors or Manufactures chargeable with theſe Duties; for he who without giving due Notice, uſeth ſuch Veſſels, Utenſils or Rooms, for a ſmall Quantity, doth thereby incur the ſame Forfeiture, as he who ſo uſeth ſuch Veſſels, Utenſils or Rooms, for a greater Quantity: For it is not the greatneſs of the Quantity which makes the Offence or Forfeiture in either of the ſaid Caſes; but the not making an Entry in the one Caſe, and the not giving Notice in the other, are the Offences which make the Forfeitures in each of the ſaid reſpective Caſes.

But the Forfeiture for not paying the Duties, being double the Value of the Duties neglected to be paid, the Proportion of all Forfeitures, in thoſe Caſes, doth entirely depend upon the Proportions or Quantities of the Liquors or Manufactures. And therefore it will be neceſſary in all Informations of thoſe Kinds, to mention ſome certain Quantity or Quantities: As, that the Defendant brewed ſo many Barrels of Strong Beer

Beer, and ſo many of Small; or made ſo many Buſhels of Malt; or ſo many Pounds of Candles, or the like, ſo as to ſuit with the Caſe. But yet this doth not make it neceſſary that the Informer muſt in ſuch a Caſe be tied, or obliged to prove the whole Quantity mentioned in ſuch Information; but if he prove but any part thereof, ſuch Proof of any part of the Quantity mentioned in the Information, will be ſufficient to maintain ſuch Information as to ſo much as is ſo proved; as if in an Information, it ſhould be mentioned, that the Defendant in ſuch a Time made One Thouſand Buſhels of Malt; and not having paid the Duty thereof, had thereby forfeited double the Value of the Duty of the ſaid One Thouſand Buſhels; and if upon the Hearing, the Informer ſhould prove the making but of one Hundred Buſhels only, the Juſtices muſt give Judgment for the double Duty of ſuch One Hundred Buſhels, and muſt acquit the Defendant of the reſt.

And ſo where-ever the Forfeiture is in Proportion to any certain Quantity, ſome certain Quantity muſt be mentioned in all ſuch Informations; as in Informations againſt Maltſters for mixing, for treading or for hiding and concealing; in all which Caſes the Forfeitures being at and after the Rate of ſo much *per* Buſhel; it will be neceſſary in all thoſe Informations to mention, that ſome certain Number of Buſhels were ſo mixed, trodden, hidden, or concealed; but notwithſtanding ſuch mentioning ſuch certain Number of Buſhels in any of the ſaid Caſes; yet, if at the Hearing or Tryal, Proof be made of ſome Part only of the Number of Buſhels mentioned in ſuch Information, yet ſuch proving

proving of such part only will be sufficient to maintain such Information as to such Part as is so proved; and the Justices in such Case ought to give Judgment as to so much as is so proved, and to acquit the Defendant of the rest; for an Information for more than is proved, is a good Information as to so much as is so proved.

In Informations for not making true Entries, or for the double Duty, it is usual to mention that the Defendant, at several times between such a Day and such a Day, brewed Beer, or made Malt, or the like; but if at the Tryal or Hearing, Proof be made of one brewing only, or of one making of Malt only, such Proof will be sufficient, and if in such case the Defendant doth not prove an Entry or Payment, the Informer ought to recover; because whether there be several brewings or makings of Malt, or but one in each of the said respective Cases, will make no Difference; for in such Cases the Defendant is equally obliged to make Entry, and to pay the Duty of such one brewing, or of such one making, as if there had been several brewings, or several makings; and an Information which mentions more brewings, or makings, than are proved, yet is a good Information as to what is proved; and tho' one only is proved, there might really be more, so that the Information might be rightly laid.

Sometimes one Information is laid for several Offences of different Natures; as for hiding one Parcel of Malt, and for mixing another Parcel of Malt: If at the Hearing such Information one of these Offences is proved, and the other not proved, in such Cases the Justices ought to give Judgment for the Informer, as to the Of-

fence which is so proved, and to acquit the Defendant of the other.

One Information may likewise be laid for several Instances of an Offence of the same Nature, as for refusing at several times to permit an Officer to enter into a Malt-house, &c. in which Case the Information is for so many times Twenty Pounds, as the Instances of such refusing mentioned in such Information do amount unto; But if at the Hearing Proof be made of one Instance only, such Proof will be sufficient to maintain such Information, as to such one Instance; and in such Case the Justices ought to give Judgment for the Prosecutor, as to such one Instance, and to acquit the Defendant of the rest.

It is often objected against a Witness, That what he says is out of Spite or Malice, arising from some late Quarrel, &c. But tho' such Quarrel may accidentally be the Occasion of such Witness his discovering what he knows, yet that don't destroy the Credit of his Testimony; for tho' the Quarrel may indeed provoke him to tell what he would not have told, if such Quarrel had not happened, yet it doth not follow, that the Quarrel doth provoke him to tell more than he knows to be true; and if he doth not, then the Quarrel ought not to invalidate the Credit of his Testimony; and therefore all Evidence, occasioned by Malice, ought not to be rejected: But if by Malice any are provoked to say more than is true, that indeed ought to be rejected.

The Matters in Question, on these Informations, generally lye in a narrow Compass, and might soon be determined, if both Parties would

I speak only to that which is the Fact really in Question: But in these and other Cases it often happens, that the debating of that which really doth not concern the Matter in Question, takes up more Time than is spent about the Matter it self; to prevent which, the Prosecutor, and such as are on his side, should take Care to avoid saying any Thing that may give Occasion for such Discourse as doth not relate to the Point in Question, and particularly should avoid all manner of Reflection; and if any Reflections be made on him, should pass them by (at least) till the Hearing is over; for such Defendants as are Guilty (especially if Old Offenders) and others concerned for them, will gladly take (or rather than fail will make) Occasions to say a great deal, tho' but little, or perhaps none of it is to the Purpose.

For when they know that the Point in Question is against them, it is not safe for them to run directly upon it; nor is it their Business, by their Discourse, to come near it, or to suffer any Body else so to do; but rather to engage upon some Subject not at all material to the Fact in Question; and if that be managed with some Warmth, it will very probably introduce a fresh Subject of Discourse before the first is ended; and by that Means it may happen, that the Fact in Question may never be rightly understood: To prevent which, avoid entering into such Disputes about any Thing that is not the Point in Question; and tho' you have some thing to say, which you may think very sharp and cutting, yet if it is not directly to the Point, keep it to your self, for the Defendant will answer to that more willingly, than

he will to the Matter it ſelf, if that be againſt him.

Tho' in the Recording of theſe Informations it is mentioned, That the Informer in his proper Perſon exhibited to the Juſtices his Information, *&c.* this doth not make it neceſſary that the Informer ſhould be perſonally preſent; for if the Juſtices are ſatisfied, that the Informer ſo named doth own the Proſecution, that is ſufficient for them to proceed thereon, and is agreeable to what is daily done in like Caſes in the Court of *Exchequer*, and other Courts of *Weſtminſter*, where Informations are exhibited in the like Form, and are carried on in the Names of Perſons who very rarely are perſonally preſent in thoſe Courts when thoſe Cauſes are there determined; the mentioning that the Informer in his proper Perſon exhibited his Information, being only a Form uſed to diſtinguiſh theſe from other Proſecutions, where the Party proſecutes by his Attorney. It may, and often doth happen, that during the Times of the Circuits, ſeveral Informations, brought in the Name of the Attorney-General, are at the very ſame time trying in ſeveral Counties remote from one another; ſo that it would be impoſſible for the Attorney-General to be perſonally preſent at all of them; but inſtead thereof he is not perſonally preſent at any one of them.

In ſome of the Clauſes in theſe Acts, ſeveral Words and Expreſſions are uſed, to ſhew and deſcribe the ſeveral Methods or Means uſed in committing particular Frauds; and in all, or moſt of the ſaid Clauſes, ſuch Words or Expreſſions are uſed diſ-junctively; as in the Clauſe in the Malt-Act againſt Treading, *&c.* the

Words are, *That if any Maltſter*, &c. *ſhall Tread, Ram, or otherwiſe Force together, any Corn*, &c. *he ſhall forfeit Two Shillings and Six Pence for every Buſhel ſo trodden, rammed, or forced*, &c. But you are to obſerve, that in Proſecutions on that Clauſe, or any other like Clauſe ſo worded, the Proſecutor, in his Information, muſt inſert the Word *(and)* inſtead of the Word *(or)* and tho' thereby his Information will, in that particular, vary and differ from the Words of ſuch Act of Parliament, yet ſuch Information will be right and as it ſhould be; but if in ſuch Caſe the Information ſhould be exactly according to the Words of ſuch Act of Parliament, *viz. That the Defendant did tread, ram* (or) *otherwiſe force together the Corn*, &c. It might be objected, That ſuch Information is not ſufficient, becauſe it doth not poſitively charge that the Offence was committed by all, or by which of the ſaid Ways or Methods; and therefore to prevent ſuch Objection, and that the Proſecutor may be at Liberty to prove the Offence done by any of the ſaid Methods, the beſt Way will be, in ſuch Information, to inſert the Word *(and)* inſtead of *(or)* charging in and by ſuch Information, That the Defendant did Tread, Ram, and Force together the Corn, *&c.* and thereby ſuch Information will be as poſitive, as if it had mentioned the Offence to have been committed by only one of the ſaid Methods; for where the Nature of the Offence is ſuch, that it may in part be committed by Two, Three or more ſeveral Methods or Means, it is as poſitive to ſay, it was committed by each of thoſe particular Methods, as to ſay it was committed by any one of them only.

But notwithſtanding ſuch Information doth mention ſuch Offence to have been done by all the ſaid Ways, yet if at the Hearing it is proved to have been done by any one of the ſaid Methods, ſuch Proof will be ſufficient to maintain ſuch Information. For the ſaid Clauſe being in the Diſjunctive, and the ſaid Act of Parliament having laid the Penalty upon the committing the ſaid Offence, by any one of the ſaid Methods, the proving it to have been committed by any one of them, will be as effectual as proving it to have been done by all of them.

Nor will it be a good Objection in ſuch Caſe to ſay, That in regard the Proof is only of the committing ſuch Offence by one of the ſaid Methods only, that therefore the Information ought particularly to have mentioned ſuch one Method only: For the Truth may be, that the Offence was really committed by every and each of the ſaid Methods, and the committing thereof by each of the ſaid different Methods, might be ſeen by a different Witneſs, *viz.* one might ſee the Defendant tread the Corn, another might ſee him ram it, and a third might ſee it forced together by ſome other Method; and if ſo, the Informer will have Reaſon for laying the Information for committing ſuch Offence by each of the ſaid Methods; and yet it may happen, that Two of the Witneſſes may fail, and not attend at the Hearing; and if in ſuch Caſe one only of the Witneſſes doth attend, the Informer will in ſuch Caſe be able to prove the committing ſuch Offence, by ſuch one Method only as was ſeen by ſuch Witneſs as ſhall ſo attend; but yet it would be moſt unrea-

unreasonable, that the Informer should in such Case be confined to lay his Information for the committing such Offence by any one of the said Methods only, and such confining an Informer would be an Obstruction to the Course of Justice.

For if he should lay his Information only for ramming the Corn, and if the Witness who see it rammed should not attend, and the other Witnesses who see the Corn trodden and forced together by some other Method, should attend, and prove it so trodden, it may make a Doubt whether proving it to have been trodden would maintain such Information so particularly laid for ramming only; and therefore, as before is said, the best Way is, to lay it to have been done by all the Ways mentioned in such Act; and then let the Informer prove it by which of the Ways he can; for tho' the Law requires Certainty in such Informations, yet it doth not require such Particularity as may prevent the proving and coming at the Truth: But in other Cases alloweth such Latitude as is before mentioned.

In all Actions of Assault and Battery, *&c.* the Plaintiff declares, That the Defendant did assault, beat, wound, and evilly treat the Plaintiff, and committed other Enormities, *&c.* But this doth not make it necessary for a Plaintiff to prove all the said Particulars; but on the contrary, the constant Course is, That if the Plaintiff prove only the Assault, the Defendant is found guilty of the Assault, or if the Assault and Battery is proved, then the Defendant is found guilty of the Assault and Battery; and tho' the Wounding is not proved, yet such

Proof as before is mentioned is sufficient to maintain the Action. And so in other Cases, if any such part of a Declaration as is sufficient to maintain an Action be proved, the Plaintiff ought to have a Verdict for such Part as is so proved, as well as if he had brought his Action for such part only.

CHAP.

CHAP. VIII.

In what Time, and how ſoon Juſtices of the Peace may give Judgment in Proſecutions before them, upon theſe Laws.

THO' the before-mentioned Acts of Parliament have limited the Time for commencing theſe Proſecutions, and laying Informations in theſe Caſes, not to exceed Three Months, to be computed from the Time when the Forfeiture was made, or to the Offence committed; and that within one Week, next after the Laying ſuch Information the Defendant ſhould have Notice thereof: Yet neither by thoſe nor by any other of the Acts is there any Direction given, how long before the Time of Hearing ſuch Notice ſhall be given, nor how ſoon after ſuch Laying ſuch Information the Hearing and Determination thereupon may be, which being thus left at large, and the End and Deſign of ſome of theſe Proſecutions being different from others, Defendants in ſome of theſe Proſecutions may be allowed longer Time than is abſolutely neceſſary; in others, (that is) where the End and Deſign of the Proſecution is only to reform and correct irregular Practices, theſe Proceedings may be more deliberate, that the Perſons ſo proſecuted may not have any Pretence to complain of their not having had convenient Time to prepare for their

their Defence: But where the End and Design of the Prosecution is only to secure Money actually due to the Crown, which is in great Danger of being absolutely lost, if the Prosecution be any way delayed; there the Proceedings ought to be with as much Expedition as the Rules of the Law will admit; and to know how soon in these Cases that may be, it will be proper to review the Words of the said first mentioned Acts of Parliament, whereby the Justices of the Peace are constituted Judges in these Matters; which Words (as before is mentioned) are, *That all Forfeitures and Offences made and committed within any other Counties, Cities, &c. shall be heard and determined by any two or more Justices of the Peace, &c.* by which Words (*heard and determined*) the Justices of the Peace being in these Cases constituted Judges of Oyer and Terminer; it seemeth, That they as such, may in Cases of absolute Necessity do all in one Day. For in Lord *Cook*'s 4th *Institutes*, in the Chapter about Justices of Oyer and Terminer *Fol.* 164. it is said, That Justices of Oyer and Terminer may inquire one Day, and may determine the same Day; where are cited several Cases, of Persons that were indicted, cryed, and condemned all on the same Day: And it is there farther said, That Justices of the Peace are special Justices of Oyer and Terminer, and may inquire and try the same Day. However, since such very hasty Prosecutions in civil Causes are not usual, and since Distinction may be made between civil and criminal Prosecutions, it will not be convenient thus to hurry on even these Prosecutions for Arrears; but when Persons are slow and dilatory in paying their Duties, Informations may be

be laid in time, so as timely Notice may be given, and convenient time may be allowed for the Hearing thereof, which will be much better than such hasty Proceedings: But in Cases of absolute Necessity, it seemeth that such speedy Proceedings may be justified.

CHAP.

CHAP. IX.

Of JUDGMENTS; viz. *How and in what manner Entries of such Judgments are to be made.*

JUSTICES of the Peace being by the before-mentioned Clause in the Act of 12. *Car.* II. *Cap.* 24. *Sect.* 44. *Excise-Book, Fol.* 43, & 44, *&c.* to hear and determine Forfeitures and Offences in that Act, and in order thereto to summon the Party accused; there are in that Clause these Words, *viz. And upon his Appearance or Contempt, to proceed to Examination of the Matter of Fact, and upon due Proof made thereof, either by the voluntary Confession of the Party, or by the Oath of one or more credible Witnesses to give Judgment or Sentence according as in and by this Act is ordained and directed.*

If at the Time and Place appointed by the Justices for the Hearing, the Defendant doth appear, and the Information being then read unto him, or he being acquainted with the Purport or Contents thereof, he thereupon doth confess the Fact or Offence mentioned in the Information to be true, the Justices must then give Judgment against him, and it will not in such Cases be necessary to examine any Witness or Witnesses to prove what the Defendant hath so confessed; but yet in Cases where the Justices think fit to mitigate the Penalty, it will be proper for them to hear from the Witnesses some Account of the Fact, and of the Defendant's Behaviour,

Behaviour, which may guide them in the Proportioning such their Mitigation.

In Cases where the Defendant doth not appear, Proof ought to be made; First, of the Defendant's having been duly summoned; and Secondly, of the Offence mentioned in the Information: For though such his not appearing is the Contempt mentioned and intended by the before-mentioned Clause, and may be taken as a strong Inducement to believe him guilty of the Offence in the Information; yet by the express Words of the before-mentioned Clause, the Fact or Offence must be proved, either by the Defendant's voluntary Confession, or by the Oath of some Witness or Witnesses; and therefore though the Defendant doth not appear, yet Proof ought to be made before the Justices give Judgment.

In Cases where the Defendant doth appear, but doth not confess the Fact or Offence, the Information should be read to him, or he should be acquainted with the Purport or Effect thereof, and should then be asked whether he is, or is not guilty of the Fact and Offence mentioned in the Information; and if he saith he is not guilty thereof, or denieth the Information to be true, then it will lye upon the Informer to prove the Fact and Offence in the Information by some Witness or Witnesses. The manner how such Proof ought to be made, and what ought to be deemed sufficient Proof, hath already been shewed in the foregoing Chapter, about Hearings.

There being these Three different Ways whereby Judgment may be given in these Cases, it will be proper, that in the entring and record-

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ing of such Judgments, mention be made, whether the Defendant did voluntarily confess the Offence, or whether he was in contempt, or whether he did appear and plead.

If the Proceedings in these Cases were to be returned upon a *Certiorari*, or were to be pleaded specially to any Action brought against such Person as should execute a Warrant granted by Justices on such Judgment; it would be necessary, in returns to such *Certiorari's*, and in such special Pleadings, to set forth an Account of the Time when the Summons was granted, and to whom it was directed, and also an Account of the Time when, and of the Person by whom it was served; and it would be then also necessary to set forth some other Particulars before the Entring up of the Judgment: But it will not be necessary that all these Particulars should be drawn up and entred fully and at length before the granting or executing of Warrants upon such Judgments so to be given by Justices of the Peace; for if the Justices only set down shortly, that the Defendant doth voluntarily confess the Fact and Offence mentioned in the Information, and that thereupon they give Judgment for the Informer, according to the Contents of the Information, or that the Defendant doth not appear, and that he having been duly summoned, and the Offence being fully proved, they thereupon give Judgment according to the Contents of the Information, or that the Defendant doth appear and plead to the Information, and that upon sufficient Proof duly made before them of the Offence mentioned in the Information, they do give Judgment according to the Contents of the Information,

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tion, such Entry indorsed or written on the Back of the Information by the Justices, or by their Order, and signed by them with their Names in the manner before-mentioned, or to that Effect, will be a good Judgment, and will be sufficient to justifie and maintain the granting and executing of a Warrant upon such Judgment, because the like is allowed and daily practised, and used in all the Courts of *Westminster*, and in all other Courts of Common-Law in the Kingdom.

For when a Final Judgment is given in any of the Courts of *Westminster*, the Officer enters down only the Day, Month and Year when such Judgment is given, and the Costs ordered on the giving such Judgment; the making of which Entry is there called, The Signing of the Judgment: And immediately upon such signing such Judgment, Execution is thereupon forthwith made out and executed; though perhaps several Particulars of the Proceedings in such Cause, previous to such Judgment, and the Judgment itself is not actually entred on Record in full Form, until Six Months, and sometimes longer, after the Execution is so sued out and executed. The Reason why this is, and always was justifiable, is, Because the Judgment takes Effect, and is to all Intents and Purposes, a compleat Judgment in Law, from the Time when it is given by the Court, *viz.* when 'tis signed by the proper Officer appointed for that purpose.

More Executions are thus sued out and executed, before the Judgments are actually entred on Record, than are sued out after the same are so entred.

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And, in like manner, upon Tryals in Criminal Prosecutions, after reading the Indictment to the Prisoner, he is asked, Whether he is Guilty, or not? If he answers, Not Guilty, then he is asked, How he will be tryed? And if he answers, according to the usual Form, By God and the Country, the Officer of the Court then indorseth on the Back of the Indictment thus, *viz. Po: se,* or *Popit se*; which hath always been allowed to be a sufficient Recording, that such a Prisoner pleadeth Not Guilty, and putteth himself upon his Tryal. And if after this, the Jury find such Prisoner Guilty, then the Officer of the Court indorseth on the Back of the Indictment, *Cul'* or *Culpabilis*, signifying, that the Jury find him Guilty, and do convict him of the Crime in the Indictment; and if afterwards Judgment is given against him to be Hanged, the Officer upon giving such Judgment, indorseth thus, *viz. Susp' per Coll'* or *Suspendatur per Collum*; and according to the Constant and Ancient Usage and Practice in these Cases, Entries made in the before-mentioned Words and Abbreviations of Words, have been always allowed a sufficient Recording of the Defendant's pleading to such Indictment, and of his being convicted, and of the Judgment given against him; and upon such Entries so made in such short manner as aforesaid, Warrants are made out for the Executing such Malefactors, without waiting until the Pleas, Verdicts and Judgments are drawn up and entred in full Form.

Since therefore the Method and Practice of the Law, both in Civil and Criminal Prosecutions, allow the using such Brevity in the first Recording those Proceedings, the like Brevity may

may very well be allowed to be uſed in theſe ſummary Proceedings; and Judgments in theſe Caſes, entred in the manner before-mentioned, or to the like Effect, ought to be deemed good Judgments, and ſufficient to juſtifie and maintain the making out and executing of Warrants for the levying of ſuch Sums of Money for which ſuch Judgments ſhall be given.

It hath before been mentioned, That whatever is thus to be recorded by the Juſtices, or by their Order, ought to be expreſſed in Words of the Preſent Time and Tenſe; but that doth not make it neceſſary, nor is it indeed practicable, that all that is to be ſo entred, ſhould actually be entred at the Inſtant of Time when a Court, or when Juſtices give ſuch Judgment; for ſuch entring the Whole at that Time, would hinder the Diſpatch of Buſineſs, and delay the Hearing of Cauſes; and therefore may be done at any convenient Time after: And if what is ſo entred at ſuch convenient Time after, be agreeable with, and according to ſuch ſhort Minutes or Notes, as are then taken by the Order of ſuch Court or Juſtices; it is, and ought to be looked upon, and will be as Authentick, as if it had been entred at the Inſtant of Time when ſuch Order was made, or Judgment was given.

In Courts of Equity, the Regiſter takes only ſhort Minutes of the Orders and Decrees made in thoſe Courts which afterwards, at more convenient times, are drawn up and entred much more fully and at large; and therefore, if after ſuch ſhort Minutes taken of Judgments in theſe Caſes, there ſhould be Occaſion to have the Proceedings in theſe Cauſes, drawn up more fully and at large, than are contained in ſuch

short Notes or Minutes; yet if such fuller and larger Accounts of such Proceedings, and of the Judgments thereupon, contain nothing but what was really and in Fact done, and are conformable to, and agreeable with such short Notes so taken at the Times of such Hearings, the Justices ought not to scruple the signing their Hands to such Judgments so drawn up and entered at full Length and in full Form.

The Justices, when they take Recognizances for the appearing of Persons either at the Assizes or Sessions, do not, at the Times of taking those Recognizances, draw up the same in full Form, but only take short Minutes thereof; but when such Recognizances are returned or certified to the Assizes or Sessions, they are then drawn up in full Form.

When upon giving Judgment in any of these Cases, the Justices design to mitigate the Forfeiture to some lesser Sum; yet they ought first to give Judgment for the whole Sum proper to the Case then before them, which they may after mitigate to such lesser Sum: But it would be wholly Irregular at first to give Judgment for such lesser Sum; and therefore they must first give their Judgment according to Law, viz. for the whole Forfeiture, which they may after mitigate, if they see Reason so to do.

How, and in what manner the Justices may give Judgment against the Defendant for Part, and may acquit him of other Part, hath already been mentioned in the foregoing Chapter about Hearings; therefore for Directions therein, see in the said Chapter of Hearings.

It hath sometimes happened, that the Justices having first given Judgment for the proper Forfeiture, they have mitigated such Forfeiture to a particular Sum mentioned in such Judgment; and so far they have done right: But in such Judgments they sometimes have after added these or the like Words, *viz. Besides necessary Charges*, or, *Besides reasonable Charges*, or the like. But the adding those, or any other like Words, is intirely wrong, and is contrary to the Direction of the said Act of Parliament: For tho' the said Words, *Reasonable Costs and Charges*, are in the latter Part of the Clause of the said Act, *Sect.* 45. *Excise-Book*, *Fol.* 45. whereby the Justices have Power to mitigate; yet there are there also added the following Words, *viz. To be to them allowed by the said Justices*; so that whatever is intended for Costs and Charges, must be settled and allowed by the Justices, and not by any other or others; and they the Justices, in Cases where they design to allow such Costs and Charges, must do it at the Time when they make the Mitigation, that is, they must then compute and agree what particular Sum they think fit to allow for the Charges, which must not be left to be settled or ascertained at any future Time, either by themselves, or by any other Person; for every Judgment ought in it self to be compleat and perfect, and ought not to be left imperfect or uncertain in any Part thereof, to be afterwards made perfect.

The Reason of the mentioning the Costs and Charges in the foregoing Clause, is, That when the Justices are mitigating, they should consider the Charges, and should so order their Mitigation, that it may be sufficient to answer such Sum

as they intend for the Offence, and alſo the Charges; but yet that doth not make it neceſſary in the Mitigation, to mention or diſtinguiſh ſo much for the Offence, and ſo much for the Charges. But after the Juſtices have agreed what Sum to allot for the Offence, and what Sum to allow for the Charges, the beſt way will be to add thoſe two Sums together, and make their Mitigation to ſuch Sum as both, when added together, do amount unto: As, ſuppoſe the Juſtices intend that the Defendant ſhall pay Ten Pounds for the Offence, and Forty Shillings for the Charges, the beſt way will be, to make their Mitigation to Twelve Pounds, without particularly mentioning, that Ten Pounds thereof is for the Offence, and that the Forty Shillings is for the Charges; for in all Caſes, it is wrong to inſert in Judgments more Words or Particulars, than are neceſſary; and it is more particularly wrong ſo to do in theſe Caſes, becauſe, as hereafter is mentioned, in the Chapter about Coſts and Charges, the mentioning ſuch unneceſſary Particulars, may give a Handle for Cavils and Diſputes.

CHAP.

CHAP. X.

Of MITIGATIONS; viz. *Of the Juſtices Power to Mitigate. Some Conſiderations offered concerning* Mitigations.

BY a Clauſe in 12. *Car.* II. *Cap.* 24. *Sect.* 45. *Exciſe-Book, Fol.* 45, and 46. it is provided, That it ſhall and may be lawful to and for the reſpective Juſtices of the Peace, Commiſſioners, *&c.* where they ſhall ſee Cauſe, to mitigate, compound or leſſen ſuch Forfeiture, Penalty or Fine, as in their Diſcretion they ſhall think fit; and that every ſuch Mitigation and Payment thereupon accordingly made, ſhall be a ſufficient Diſcharge of the ſaid Penalties and Forfeitures to the Perſons ſo offending, *So as by ſuch Mitigation, the ſame be not made leſs than double the Value of the Duty of Exciſe, which ſhould or ought to have been paid, beſides the reaſonable Coſts and Charges of ſuch Officer or Officers, or others, as were imployed therein, to be to them allowed by the ſaid Juſtices.*

This Clauſe is not, indeed, repeated in any of the ſubſequent Acts relating to the Duties on Exciſeable Liquors, nor in any of the Acts for the New Duties, on other Manufactures under the Management of the Commiſſioners of Exciſe; But in each of thoſe Acts there are Two Clauſes referring to the ſaid firſt-mentioned Act, *viz.* One whereby it is enacted, That all the Powers, *&c.* in the ſaid firſt Act of 12. *Car.* II. ſhall be

exerciſed, applied, uſed and put in Execution, in relation to the Duties in each particular Act mentioned, as fully and effectually as if all and every the ſaid Powers, *&c.* were particularly repeated and again enacted in the Body of each of thoſe reſpective Acts.

And by another Clauſe, In every of the ſaid Acts it is further enacted, That all the Fines, Penalties and Forfeitures in every of thoſe reſpective Acts mentioned, ſhall be ſued for, levied, recovered or *Mitigated*, by ſuch Ways, Means and Methods as any Fine, Penalty or Forfeiture is or may be recovered or *Mitigated* by any Law or Laws of Exciſe.

So that the ſeveral Acts for ſuch other of the New Duties as are under the Management of the Commiſſioners of Exciſe, referring in the manner aforeſaid to the ſaid Act of 12. *Car.* II. the Juſtices have the ſame Power of mitigating Penalties and Forfeitures relating to the ſaid New Duties, as they have of the Penalties and Forfeitures relating to the Firſt Duties of Exciſe.

But Note, By the Act for laying Duties upon Hides, *&c.* the Juſtices Power of mitigating, is expreſsly reſtrained, *viz.* So as ſuch Mitigation do not reduce the Penalties to leſs than one fourth Part thereof.

The before-mentioned Power of Mitigating in theſe Caſes, ſeems to have been calculated upon a Foreſight or Expectation, That as ſome by ſtudied and contrived ill Practices, contrary to all Juſtice and Honeſty, would tranſgreſs, and act in direct Oppoſition to the principal Intent and Meaning of theſe Laws, in ſuch Manner and Degree, that it would be both Neceſſary and Juſt, to make them pay the utmoſt

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Peny of ſuch Forfeitures and Penalties; ſo, others might offend in a leſs Degree, and it might ſometimes happen, that ſome by Ignorance and Inadvertency, might bring themſelves within the Letter of theſe Forfeitures and Penalties, though without any evil Deſign or Intent; and therefore the Parliament have thought fit, that thoſe who were intruſted with the Executive Power in theſe Caſes, ſhould alſo be inveſted with an Equitable Power, to moderate and mitigate theſe Forfeitures and Penalties, in ſuch manner, that in each particular Caſe, the Puniſhment might be adequate and proportionable to the Size and Degree of each particular Perſon's Caſe, and to the ſeveral Circumſtances thereof.

And if in any particular Caſe or Inſtance of an Offence againſt theſe Laws, any thing is proved or made appear, that doth really extenuate or leſſen the Degree or Size of ſuch Offence, the Juſtices of the Peace, by Virtue of the beforementioned Clauſe, are in ſuch Caſe made Judges as well of ſuch extenuating Circumſtances, as of the Offence it ſelf; and therefore the comparing the Proſecutions on theſe Laws, with Proſecutions on other penal Laws, is not either fair or juſt. Nor indeed ought theſe to be treated or ſpoken of as penal Laws; becauſe when the Power of executing penal Laws, is coupled and joyned with a Power of mitigating thoſe Penalties, ſuch Laws, ſo to be executed, are rather Equitable than Penal; and the rather, becauſe the Loſs of Time, Trouble and Charges, which are neceſſary in defending other Proſecutions, in the ordinary Courſe of Juſtice, are ſaved in theſe Proſecutions before Juſtices of the Peace,

where there are no Court Fees to be paid as on other Tryals and Hearings; and here the Parties themſelves may if they will, be heard without being required to imploy or pay others to act or ſpeak for them.

Here it may be obſerved, That tho' by the former Part of this Clauſe it is ſaid, That *where the Juſtices ſee Cauſe* they may mitigate, compound, or leſſen ſuch Forfeiture, *&c. as in their Diſcretion they ſhall think fit*; yet the Clauſe don't end there, but for a Rule for their Diſcretion in theſe Caſes, there are afterwards added theſe following Words, *viz. So as by ſuch Mitigation the ſame be not made leſs than double the Value of the Duty of Exciſe, which ſhould or ought to have been paid beſides reaſonable Coſts and Charges*, &c.

But if it ſhould be apprehended that the Meaſure of the double Duty mentioned in this Part of the ſaid Clauſe is to be reckoned and computed in proportion only to ſuch particular Quantity of Liquor or other Manufactures as may happen to be the Occaſion of Diſcovering any particular Inſtance of a Fraud of this kind; in conſequence of ſuch Conſtruction, Offenders, inſtead of paying double the Duty which they ought to have paid, will, in many Caſes come off without paying near ſo much as they ought to have paid, in caſe they had not been guilty of any Fraud: As for Inſtance.

Suppoſe one (without giving Notice at the next *Exciſe-Office*) privately brews and ſells Beer and Ale, either as a common Brewer or Victualler, *&c.* and is not found out or diſcovered ſo to do, untill at ſeveral Times he hath thus brewed and ſold to the Amount of forty or fifty Barrels, or more; and ſuppoſing, that after he has ſo done

and

and not before, he happens to be detected and found out, and that all the Drink which he happens to have by him at that time when thus detected doth not exceed Three or Four Barrels, the Penalties in ſuch Caſe are, Fifty Pounds for the Copper in which he brewed, and alſo Fifty Pounds for every Veſſel by him uſed in brewing and making his Drink: But if all the ſaid Penalties ſhould in ſuch Caſe be mitigated and reduced ſo low as to be ſufficient to anſwer only the double Duty of ſuch Three or Four Barrels ſo found as aforeſaid, and the Charges of Proſecution; in ſuch Caſe, the Offender inſtead of paying double Duty for all which he had thus clandeſtinely brewed, will not pay near ſo much as will anſwer the ſingle Duty, which he ought to have paid; and therefore if in ſuch Caſe the Mitigation ſhould be made in the manner and proportion before-mentioned, it is moſt plain, that the Offender inſtead of being puniſhed for his Fraud, will be a Gainer thereby, which inſtead of deterring him or others from committing the like Frauds, is more likely to tempt and incourage others to follow the like ill Practices.

In like manner it may happen, That forty or fifty Buſhels of Malt may be found hid and concealed by a Maltſter, who before ſuch Diſcovery may at ſeveral Times have hid and concealed five hundred Buſhels of Malt, and thereby may have kept back and avoided paying any Duty for ſuch Five hundred Buſhels; now if when he is catched he is only to pay the double Duty in proportion to the ſaid forty or fifty Buſhels, or other like Quantity, found at the particular time when he is catched, his Puniſhment will not be any ways equal or proportionable to his Offence, nor

not will answer the single Duty he ought to have paid; whereas the Sense and Meaning of this part of the said Clause seems plainly to be, That the Fraudulent should at the least, and in all Events pay twice as much as he should have done in case he had been honest, and should further pay the Costs and Charges of the Prosecution for such his Fraud.

This Construction seems not only agreeable to the Sense and Meaning of the particular Clause before spoken of, but may be supported from Observations on other Clauses in other Acts of Parliament, made long since the Act beforementioned, *viz.* By 15. *Car.* II. *Cap.* 11. *Sect.* 1. *Excise-Book Fol.* 53. If any common Brewer, *&c.* makes use of any Tun, Fat, Back, Cooler or Copper, for the brewing or making Beer or Ale without giving Notice thereof at the next *Office* of *Excise*, such common Brewer, *&c.* forfeits Fifty Pounds for every such Tun, *&c.* and by 8, *&* 9. *W.* III. *Cap.* 18. *Sect.* 8. *Excise-Book Fol.* 192. If any common Brewer have or keep any private Tun, Batch, *&c.* he forfeits Two hundred Pounds for every such Tun, *&c.*

By 3, *&* 4. *W. & M. Cap.* 15. *Sect.* 1. *Excise-Book Fol.* 117. If any common Distiller makes use of any Tun, Cask, Copper, Still, *&c.* without giving Notice thereof at the next *Office* of *Excise*, such Distiller forfeits Twenty Pounds for every such Tun, *&c.* and by 10, *&* 11. *W.* III. *Cap.* 4. *Sect.* 7. *Excise-Book Fol.* 210. *&* *Cap.* 21. *Sect.* 23. *Excise-Book Fol.* 233, *&* 234. the Owner of such private Still, Back, *&c.* discovered pursuant to the Direction of the said Acts, for every such Still, *&c.* forfeits Two hundred Pounds.

There

There ſeems no other Reaſon or Occaſion for making theſe laſt mentioned Acts for the reſpective Penalties of Two hundred Pounds in each of the before-mentioned Caſes; but becauſe Frauds might happen to be carried on undiſcovered untill ſuch time that the aforeſaid firſt mentioned Penalties of Fifty Pounds in the one Caſe, and Twenty Pounds in the other Caſe, for each Veſſel might not in ſome Inſtances be ſufficient to make good what the Crown had by a long continued Fraud been deprived of; but if the Puniſhment in ſuch Caſe were to be meaſured by the double Duty of the particular Quantity found when ſuch Fraud happened to be diſcovered, the Penalties in the ſaid two firſt mentioned Acts would in all Probability have been ſufficient to have anſwered the double Duty of ſuch particular Quantity; but theſe Laws for theſe further and greater Penalties ſeem to be made on purpoſe to ſecure the double Duty of the whole which had been ſecreted and concealed.

If it ſhould be urged, That if the Proſecutor expect more than the double Duty of a particular Quantity, found at a particular Time, when a Fraud is diſcovered, he ought to prove the like Fraud as to ſome other Quantity or Quantities, at ſome other Time or Times: The Anſwer in ſuch Caſe will be very obvious, *viz.* that this Clauſe doth not direct, That the Juſtices *ſhall* mitigate the Forfeiture down to the double Duty, *But that they ſhall not in any Caſe mitigate it to leſs than the double Duty.*

Or if it ſhould be inſiſted that none ought to be condemned by Preſumption, and that therefore unleſs the Proſecutor can prove when, where, and how an Offender convicted in one Inſtance has

has before been guilty in other Inſtances, ſuch Offender ought to be deemed innocent of all that is not proved upon him: Such Argument may be anſwered thus, 'Tis true, by the Rule of Law every one is to be preſumed to be innocent untill he is proved to be Guilty; but this holds no longer than untill he is found guilty; and here the Offender is proved to be guilty, and is legally convicted of an Offence, for which he has forfeited a conſiderable Sum of Money, which he would have reduced to a ſmall Sum, becauſe he would have it preſumed that he was never guilty in the like kind before: But tho' one not convicted in any Inſtance is intituled to the Preſumption before-mentioned, ſurely he that is plainly convicted, is not on the ſame foot with him that is not convicted, and therefore it may be ſaid to ſuch a one, you are convicted of an Offence by which you have forfeited ſuch a Sum; if you expect any Mitigation, you are to give ſuch Proof as may be a Reaſon for ſuch Mitigation; otherwiſe you are not intituled thereto: For the Act don't ſay, That the Juſtices *ſhall mitigate in all Caſes, but that it ſhall be lawful for them ſo to do where they ſhall ſee Cauſe*; and therefore the Party who expects ſuch Mitigation, ought to ſhew good Reaſons for ſuch Mitigation.

It ſhould alſo be conſidered, That tho' theſe Duties are made payable to the King, and are Collected in his Name, yet only a ſmall Share and Part thereof is applicable to his own Uſe, whilſt much the greater Part (as nine Parts in ten) thereof are applicable and appropriated to diſcharge the Debts of the Nation, which untill paid, remain a Charge upon the Nation in general; and therefore whoever defrauds in theſe

Duties

Duties, don't only deprive his Majesty of his just and due Revenue, but by lessening the Produce of the Funds designed and appropriated to pay off and discharge the Debts of the Nation, they continue the Burthen upon the present Age, and those who are to follow, longer than would be necessary, if all paid what they ought to pay, and may perhaps occasion a Necessity of laying new Taxes to supply such Deficiency of the present Funds.

But tho' such Offenders should not be so numerous as to occasion the laying new Taxes, yet by their shifting the Burthen from their own Shoulders they make it lye the heavier upon others; And thus that which would be easie if equally paid, doth, by their Means become oppressive, when the whole lies upon some whilst others go excused.

It is therefore to be hoped, That in the making these Mitigations, the Consequence of being too favourable will be well considered, and that if (as before has been stated) the Offender, notwithstanding the Punishment inflicted on him, is a Gainer by his Fraud, he will be encouraged to go on therein, and others, seeing his Success, will think themselves obliged to follow his Example.

For where there being two or more of a Trade, one keeps back and with-holds part of what he ought to pay, whilst the other honestly pays according to the Law; if he who is detected doth not after all pay in proportion to him who trades fairly, he who thus pays but part only, may afford to under-sell the other; and if such other finds that his Trade declines thereby, he, for fear of losing his Trade and Customers, and

by

by a wrong Application of the Maxim of Self-preservation may (it is to be feared) be induced to think himself obliged to endeavour by Fraud, to defend against Fraud, and to repair his particular Losses out of the Revenue of the Publick, which in many Instances may in Time occasion such Deficiency as is before-mentioned.

It would be tedious to mention the many Insinuations commonly used to move the Justices to Lenity in these Cases; but amongst others it is commonly urged, That the Fraud of one particular Offender can have have no considerable Influence on the general produce of any Branch of the Revenue, and that therefore the Justices without prejudice to the Publick, may exercise Lenity in that particular Instance.

But it is hoped, that it will be considered, That tho' such Offender may be the only Offender at that Time before those particular Justices, yet there may be many others of the like Nature before other Justices, in other Places, at that very Time, who with as much Reason and Justice may urge the same Insinuation, which may be used on the Behalf of every the like single Offender, and may as well serve to extenuate the Offences of all, as of any one, until it be extended so far as to destroy the Force and Effect of these or any other Laws.

But if it should be supposed, That he in Fact is the only Offender in that kind, the Honesty of others ought not to extenuate his Knavery; but the Argument ought to be turned upon him, *viz.* That if all others are honest, and he the only Offender, his Punishment ought to be the more Exemplary.

The

The Poverty of an Offender is alſo frequently uſed as an Argument for Lenity, and that the Publick is better able to bear the loſs occaſioned by a poor Man's Fraud, than he is to make Satisfaction, &c. It cannot be denied but that the Poverty of an Offender ought to be conſidered, but then the Poverty and Impoveriſhing of many others, who are as poor, tho' more honeſt, ought to be conſidered more than the Poverty of any one; and the letting one Offender eſcape without due Puniſhment, may and will, in many Caſes, be the Occaſion not only of the Impoveriſhing, but alſo of the undoing of many, ſuch as are both poor and honeſt, becauſe an Offender who pays only part, whilſt others pay the whole that is due, can and will under-ſell ſuch as pay the whole, and thereby may and will undermine the fair Traders in their Trades and Buſineſs, and rob them of the Means of getting their Living.

CHAP.

CHAP. XI.

Of Charges and Costs, &c. Upon mitigating Penalties, Consideration ought to be had of the Charges of the Prosecution. But it is not either necessary, or advisable, that in the Judgment in such Case, the Costs and Charges should be particularly mentioned.

IN the before-mentioned Clause in the 12 *Car.* II. *Cap.* 24. *Sect.* 45. *Excise-Book, Fol.* 45, and 46. after the Power given to the Justices of the Peace, to mitigate Penalties and Forfeitures, there follow these Words, *viz.* so as by such Mitigation, the same be not made less than double the Value of the Duty of Excise, which should or ought to have been paid, besides the reasonable Costs and Charges of such Officer or Officers, or others, as were imployed therein, to be to them allowed by the said Justices; which Words, relating to the allowing such Costs and Charges, have occasioned some to apprehend, that where a Penalty is mitigated, it is even necessary that some part of the Sum ascertain'd by such Mitigation, should be appointed for the Costs and Charges of the Prosecution in that Cause: Whereas the true Sense and Meaning of this part of the said Clause, is only, That the Justices, in the proportioning their Mitigation in any particular Case, should first consider what Sum

Sum they think proper to be paid for the Offence, and ſhould alſo conſider and compute what Charges the Proſecutor hath been at in ſuch Proſecution, and ſhould make their Mitigation to ſuch Sum as may be ſufficient both for the one and the other. But it will not be neceſſary for the Juſtices in their Judgment, to mention or diſtinguiſh how much, or what particular Part of ſuch Sum, is by them intended for the Offence, and how much for the Charges; becauſe in and by the ſame Clauſe, *Sect.* 45. *Exciſe-Book, Fol.* 46. it is enacted, That the neceſſary Charges for the recovering of all Forfeitures, *&c.* ſhall firſt be deducted, before the Diſtribution is made between the Crown and the Informer; ſo that when a Penalty is mitigated to a leſs Sum, it is altogether unneceſſary to aſcertain how much of that Sum is intended for the Offence, and how much for the Charges; but the Intent and Meaning of this part of the Clauſe, is no more, than that the Sum to which a Penalty is by Mitigation reduced, be ſufficient to anſwer and pay ſuch Sum as the Juſtices intend to inflict on the Offender for the Offence, and alſo to anſwer and pay the Charges of the Proſecution.

But the mentioning how much, and what Part of ſuch Sum is intended for the Offence, and what Part thereof is intended for the Coſts and Charges, is not only unneceſſary, as already has been obſerved; but is imprudent, and not adviſeable to be done, becauſe it may be attended with the ill Conſequences of giving Opportunity to raiſe Objections againſt ſuch Judgments: As for Inſtance;

An Information having been laid againſt a Maltſter for an Offence by which he had forfeited Fifty Pounds, the Juſtices, upon hearing all Parties, convicted him of the Offence, and gave Judgment againſt him, for the Fifty Pounds, which they mitigated to Four Pounds, and appointed Twenty Shillings, part of the Four Pounds, to be for the Charges of that Proſecution. The Maltſter appeals to the Quarter-Seſſions, where his Council objected,

Firſt, That the Law does not allow any Coſts or Charges to be recovered upon a Penal Law.

Secondly, That the Act of Parliament having in that Caſe directed, That all Forfeitures by that Act impoſed, ſhould be divided, one Moiety to the Crown, and the other Moiety to the Informer; the Juſtices of the Peace had no Power to alter the ſaid Act, by appointing any Part to be for Coſts or Charges.

And the Juſtices at the Quarter-Seſſions paying a Deference to the Learning of the Gentleman who made the Objections, and being deceived by his wrong Reaſoning, they, upon theſe Objections, reverſed the Judgment; tho' neither of theſe Objections would have held, if proper Anſwers had been given thereto: For,

As to the Firſt, Generally ſpeaking, it is true, That upon a penal Law, no Coſts are to be given (that is) in ſuch Caſes where the whole Penalty is recovered: But where (as in the preſent Caſe) ſuch Penalty, by the expreſs Direction of ſuch particular Act of Parliament, may

may be mitigated and leſſened to a ſmaller Sum; and when by the expreſs Words of ſuch Act of Parliament, thoſe who are impowered to make ſuch Mitigation, are likewiſe impowered to allow Coſts and Charges, thoſe who are ſo impowered, may legally execute that Power: For it cannot be doubted, but that the expreſs Words of an Act of Parliament, may alter the Common Law.

As to the Second Objection, It is true, that by a Clauſe in the Malt-Act, one Moiety of all the Forfeitures and Penalties therein mentioned, are to be to the Crown, and the other Moiety to the Informer.

But it is to be obſerved, That by the ſaid Malt-Act, it is particularly Enacted, That all the Powers, Authorities, Directions, Rules, Methods, *&c.* in the before-mentioned Act of 12 *Car.* II. ſhall be exerciſed, practiſed, applied, uſed, and put in Execution, in and for the raiſing and levying the Duties granted by the ſaid Malt-Act, as fully and effectually to all Intents and Purpoſes, as if all and every the ſaid Powers, Authorities, Rules, Directions, Methods, *&c.* were particularly repeated, and again enacted in the Body of the ſaid Malt-Act.

And by the next Clauſe, it is further enacted, That all Fines, Penalties and Forfeitures impoſed by the ſaid Malt-Act, ſhall be ſued for, levyed, and recovered or mitigated, by ſuch Ways, Means and Methods, as any Fine, Penalty or Forfeiture, is, or may be recovered or mitigated by any Law or Laws of Exciſe.

And from thence it appears, that as the Juſtices, (by Virtue of the ſaid Clauſes of Reference) had power to mitigate the Penalty of

Fifty Pounds, to Four Pounds, they likewise hath power to appoint that part of the Sum to which they made such mitigation, should be for the Costs and Charges of that Prosecution.

But so it was, that upon the before-mentioned Objections, that Judgment was reversed; and therefore to prevent the like in other Cases, and likewise to prevent even such Disputes and Controversies, it will be much safer, and less liable to Objections, wholly to omit mentioning any thing about the Costs or Charges, and only to mitigate the Penalty to such Sum, as may be sufficient to answer the Summ intended for the Offence, and the Costs and Charges of the Prosecution; but not to make any mention, that any part of such Sum is intended for such Costs and Charges.

CHAP.

CHAP. XII.

Of WARRANTS; viz. *Of Warrants for Levying Sums of Money, adjudged by Juſtices of the Peace, upon Informations Exhibited before them, for Offences againſt the Exciſe Laws.*

JUſtices of the Peace, by a Clauſe in the Act of 12 *Car.* II. *Cap.* 24. *Sect.* 44. *Exciſe-Book, Fol.* 44, and 45. are impowered to hear and determine Forfeitures and Offences againſt that Act; and in the latter part of the ſaid Clauſe, are theſe Words, *viz. And to award and iſſue out Warrants under their Hands, for the Levying of ſuch Forfeitures, Penalties and Fines, as by this Act is impoſed, for any ſuch Offence committed upon the Goods and Chattels of the Offender, and to cauſe Sale to be made of the ſaid Goods and Chattels, if they ſhall not be redeemed within Fourteen Days, rendring to the Party the Overplus, if any be; and for Want of ſufficient Diſtreſs, to impriſon the Party offending, till Satisfaction be made.*

It may be obſerved, That it is not here ſaid, that ſuch Warrants ſhall be under the Hands and Seals of the Juſtices of the Peace, but only under their Hands; and therefore ſuch Warrant will be ſufficient, though it ſhould only be under the Hands of the Juſtices, and ſhould not be under their Seals: However, the adding their Seals can do no hurt, and may make the Perſons concerned more readily ſubmit to ſuch Warrants; and

therefore it may be convenient, that ſuch Warrant be ſealed, as well as ſigned, by the Juſtices of the Peace.

By a Clauſe in the Act of 15. *Car.* II. *Cap.* 11. *Sect.* 16. *Exciſe-Book, Fol.* 71. a Penalty of Ten Pounds is laid on ſuch as ſhall give any Bribe to an Officer of Exciſe; and in the latter part of that Clauſe, the Juſtices, *&c.* are impowered to adjudge and determine Offences againſt that Clauſe, and to cauſe ſuch Penalties by Warrant under their *Hands and Seals*, to be levied, *&c.* And therefore in that particular Caſe, it would be neceſſary that ſuch Warrants ſhould not only be under the Hands, but ſhould alſo be under the Seals of the Juſtices of Peace.

The ſaid Act of 12. *Car.* II. mentioning, That for want of ſufficient *Diſtreſs*, the Party offending may be impriſoned, *&c.* ſuch Warrants are often called Warrants of Diſtreſs, and from thence ſome have been induced to think the Seizures made on theſe Warrants, to be of the ſame Nature as Diſtreſſes for Rent; whereas theſe Warrants are in truth, Warrants for Execution, and are to all Intents direct Executions. And between theſe and other Executions iſſued out of other Courts of Law, there is this only Difference; That whereas Goods, *&c.* ſeized upon other Executions, may be ſold immediately after they are ſeized, the Goods, *&c.* ſeized upon theſe Warrants, cannot legally be ſold until fourteen Days after they are ſeized; that is, the fourteen Days muſt be fully expired before the Goods, *&c.* can be ſold. But the Defendant in ſuch Warrant, by paying down the Money to be levied by ſuch Warrant, may redeem the Goods immediately after they ſhall have been ſo ſeized.

But

But if any other Perſon as a Friend to the Defendant in ſuch Warrant, before the Fourteen Days are expired, ſhould offer to redeem ſuch Goods, *&c.* as ſhall be ſeized by Virtue of ſuch Warrant, by laying down the Money mentioned in ſuch Warrant; it will not be adviſeable to let ſuch Perſon have ſuch Goods unleſs at the Requeſt of the Defendant, ſignified by ſome Note or Writing ſigned by ſuch Defendant, that it may appear that the ſame was done at the Requeſt of ſuch Defendant; and without ſuch Note the Perſon who ſeizes Goods, *&c.* by Virtue of ſuch Warrant, muſt not before the Fourteen Days are fully expired, diſpoſe of ſuch Goods to any, except to the Defendant in ſuch Warrant.

The Perſons who execute ſuch Warrants muſt not make any manner of Uſe of ſuch Goods or Chattels as they ſhall ſeize by Virtue of ſuch Warrants; and therefore if Horſes ſhould be ſo ſeized they muſt not be ridden or otherwiſe put to work; but if milch Cows ſhould be ſeized, they may be milked, becauſe ſuch Milking is for the Preſervation of the Cows.

By a Clauſe in the Act of 15. *Car.* II. *Cap.* 11. *Sect.* 13. *Exciſe-Book, Fol.* 68. It is Enacted, That all and every the brewing Veſſels and Utenſils for Brewing, into whoſe Hands ſoever the ſame ſhall come, and by what Conveyance or Title ſoever the ſame ſhall be claimed, ſhall be liable and ſubject unto, and are hereby charged with all and ſingular the Debts and Duties of Exciſe in arrear, and owing by any Perſon or Perſons for any Beer or Ale made within the ſaid Brew-Houſe; and ſhall alſo be ſubject to all Penalties and Forfeitures incurred by ſuch Perſon or Per-

ſons ſo uſing the ſaid Brew-Houſe for any Offence againſt the Laws and Statutes of *Exciſe*; and that it ſhall and may be lawful in all Caſes to levy Debts and Penalties, and uſe ſuch Proceedings againſt the Utenſils therein contained, as it may be lawful to do, in caſe the Debtor or Offender uſing the ſaid Utenſils had been truly and really Owner and Proprietor of the ſame.

And it being Enacted by reſpective Clauſes in all the ſeveral following Acts for laying other like Duties on other Manufactures, That all and every the Powers, *&c.* and Clauſes in the before-mentioned Act, ſhall be exerciſed, practiſed, applied, uſed, and put in Execution, for the Raiſing and Levying the Duties granted by ſuch reſpective following Acts, as fully and effectually to all Intents and Purpoſes, as if all and every the ſaid Powers, *&c.* and Clauſes were particularly repeated and again enacted in the Bodies of the ſaid reſpective following Acts.

And by other like reſpective Clauſes in all the ſaid Acts, it being enacted, That all Penalties and Forfeitures in the ſaid reſpective following Acts ſhall be ſued for, levyed, and recovered by ſuch Ways, Means, and Methods, as any Fine, Penalty, or Forfeiture, is or may be recovered by any Law or Laws of *Exciſe*.

By Virtue of the ſaid Clauſes of Reference, the Utenſils uſed by other Manufacturers are liable to all Arrears due from ſuch the reſpective Manufacturers, and to all Penalties and Forfeitures incurred by them, in like manner as the Utenſils uſed by common Brewers.

But beſides theſe general Clauſes of Reference, there are alſo other Clauſes in each of the ſaid reſpective Acts, whereby not only the

Utenſils

Utenſils uſed by ſuch reſpective Manufacturers, but alſo the Materials for making ſuch Manufactures in the Cuſtody of ſuch Manufacturers, are likewiſe ſpecially made liable to all Arrears, Penalties, and Forfeitures due from or incurred by ſuch Manufacturers; and particularly by the Malt Act, All Malt in the Cuſtody of any Maker of Malt is liable to all Arrears, and to all Penalties and Forfeitures either due from or incurred by ſuch Maker of Malt.

So that tho' in ſome Caſes the Property of theſe Things may not really be in the Manufacturers, yet, if ſuch Things are in the Cuſtody of ſuch Manufacturers, yet they will be liable to be ſeized by ſuch Warrants; provided ſuch Warrants are properly worded and expreſſed: And therefore in ſuch Caſes it will not be proper to make ſuch Warrants to ſeize the Utenſils and Malt of the Defendant, becauſe ſuch Warrant will only juſtifie the Seizing ſuch Utenſils and Malt as really are the Defendant's: But if the Warrant be ſpecially worded, to ſeize all Utenſils uſed by ſuch Maltſter, for the Making of Malt, and all Malt found in his Cuſtody; then ſuch Warrant will be ſufficient to juſtifie the Seizing ſuch Utenſils and Malt, as ſhall be found in the Cuſtody of ſuch Maltſter, tho' the Property thereof ſhould happen not to be in the Defendant in ſuch Warrant, but ſhould happen to be in ſome other Perſon or Perſons: And the like muſt be obſerved in the Making Warrants againſt other Manufacturers.

And tho' in ſome Inſtances it may happen, that by this Means one Man's Goods or Effects may be made liable to anſwer for the Default and Offence of another, that will not appear to

be

be very extraordinary when it is considered, that in all well constituted Governments it hath been, and is a Maxim, that the Interest of the whole ought always to be preferred, and to take place before the Interest of any Individual: By which Maxim what is before-mentioned will be maintained and justified, because in Fact the whole Nation hath an Interest of these Revenues, as they are the Means to discharge the Debts thereof, contracted for the publick Safety.

It hath been usual in these Warrants to recite great part of the Information, and of the Proceedings and Judgment thereupon, but in regard the Person or Persons who are to execute such Warrants do therein act only ministerially, and as Persons under the Direction of the Justices who grant such Warrants, it is altogether unnecessary in such Warrants to make such long Recitals; but will be sufficient in such Warrants shortly and in few Words to refer to the Judgments on which such Warrants are granted; and so is the Course in Executions issuing out of the Courts of Law in *Westminster-Hall*.

Other Warrants made by Justices of the Peace being usually directed to Constables and Headboroughs, *&c.* it hath been usual to direct Warrants on Judgments in *Excise* Causes to the Constables and Headboroughs, *&c.* but it is much more proper that these Warrants should be directed to the Officers of *Excise*, because all of them give Security to the Crown, that they will faithfully pay and account for all Money which they shall receive by Virtue of such Warrants or otherwise; and such Officers being under the Direction of, and frequently attending upon the Collectors of these Duties to whom such Money

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when levyed ought to be paid; the *Exciſe* Officers can pay the Money to the Collectors more conveniently than the Conſtables can: But it will be proper in all ſuch Warrants to inſert a Clauſe, requiring all Conſtables, *&c.* to be aiding and aſſiſting to the Officers in the Executing ſuch Warrants, that in caſe the Officers in the Executing thereof do meet with any Oppoſition or Reſiſtance, they may then by Virtue of ſuch Clauſe require the Conſtables, *&c.* to aſſiſt them therein, ſo far as to ſee the Peace kept, and the Law duly complied with.

When there is Occaſion to lay Informations againſt ſeveral Perſons of the ſame Trade, as Victuallers, or the like, who do not duly pay their Duty; the Collectors to ſave the Trouble of drawing ſeparate Informations againſt each of them, do ſometimes join ſeveral ſuch Defendants in one and the ſame Information; but it would be better to have a ſeparate Information againſt each Defendant: But tho' ſeveral ſuch Defendants ſhould be joined in one Information, yet let the Warrants for Execution be ſeparate, becauſe when ſeparate they may be executed more conveniently than when ſeveral Defendants are joined in the ſame Warrant.

Theſe Warrants may bear Date either ſome Day after the Judgment is given, or on the ſame Day, when the Judgment is given; for tho' the Warrant is dated on the ſame Day when the Judgment is given, it ſhall be intended to have been made on ſuch Part of that Day as was after the giving the Judgment: When in Cauſes depending in *Weſtminſter-Hall* Judgment is given on the very laſt Day of a Term; yet an Execution may forthwith be made out upon ſuch Judgment,

Judgment, and may bear Teste or Date on the last Day of that Term in which such Judgment was so given.

In all Cases where there is no Danger of the Defendant's carrying off his Goods or Effects, so as to prevent the levying the Money, it will be best to demand the Money of the Defendant before the Warrant is executed; and it may be convenient to have some Persons then present to be Witnesses that such Demand was so made; and if upon such Demand the Defendant refuseth to pay, then let such as are Witnesses of such Demand and Refusal go away before such Warrant is executed: Not that this is any otherwise necessary, than that the Defendant may be left without any Pretence of Excuse for not complying with the Judgment of the Justices.

In the latter part of the before-mentioned Clause in the said Act of 12. Car. II. whereby the Justices of the Peace are impowered to grant Warrants for levying such Penalties and Forfeitures, are these Words, *viz. And for want of sufficient Distress to imprison the Party offending 'till Satisfaction be made.* But Note, That before any such Warrant can be made to arrest and imprison the Person of the Defendant, there must first be a Warrant to seize the Utensils, &c. and the Defendant's Goods, and that Warrant must be returned; all which must be done before any Warrant can regularly be made to arrest and imprison the Defendant's Person; which Method ought to be observed, tho' perhaps it may be well known or sufficiently proved before the Justices, that all the Utensils, and all the Defendant's Goods and Effects are carried off; yet such Proof will not be sufficient Foundation for granting

granting such Warrant to arrest and imprison the Defendant's Person: For this Law being in all Cases very tender of depriving Men of their Liberties, it is necessary, that all possible Means should be used to levy the Money on the Goods, &c. before the Person of the Defendant be imprisoned: But if a Warrant to seize the Utensils and Goods, be made and delivered to an Officer to be executed; and if such Officer having made diligent Search for such Utensils and Goods, cannot find any such, or cannot find sufficient to answer the Summ mentioned in such Warrant; and if such Officer doth upon such Warrant make a proper Return, that having made diligent search, he cannot find any Utensils or Goods whereon to levy the said Summ mentioned in such Warrant; or that he hath seized some Utensils or Goods which he hath sold and disposed of, and that the Money thereby arising amounteth but to such a Summ, being less than the Summ in such Warrant; then, and in either of the said Cases, a Warrant may be made to arrest and imprison the Person of the Defendant; but then there ought to be a Duplicate made of such Warrant, because when the Officer has so arrested the Defendant, he must conduct him to the Prison next to the Place where such Defendant shall be so arrested, and there deliver him into the Hands of the Keeper of such Prison, who cannot regularly receive him into his Custody without a Warrant, and it will not be safe for the Officer who arrested such Defendant to part with the Warrant, whereby he was commanded so to do, but ought to keep that for his Justification; and that he may so do, and that the Keeper of the Prison may also have a Warrant

ment for his Juſtification, it will be neceſſary, as before is ſaid, that there be a Duplicate of ſuch Warrant, that the Officer may keep one, and the Keeper of ſuch Priſon may have the other.

The Granting of Warrants on theſe Judgments, may, in many Caſes be juſtified, tho' in ſuch Judgment or in ſome other part of the Proceedings, there may be ſuch Error or Defect for which ſuch Judgment may by a proper Method of Proceeding be reverſed; but where a Judgment is not void of it ſelf, but is only erroneous, or ſo faulty that it may be reverſed, ſuch Judgment until it is ſo reverſed is a good Judgment, and ſufficient to juſtify the Granting and Executing of a Warrant thereupon: But if a Judgment be void in it ſelf, (as in ſome Caſes it may) then a Warrant granted on ſuch Judgment will likewiſe be void.

CHAP.

CHAP. XIII.

Of APPEALS.

IN the before-mentioned Clauſe in *12. Car. II. Cap. 24. Sect. 44. Exciſe-Book, Fol. 43, & 44.* it is mentioned, That if the Juſtices of the Peace after Complaints made and Notice given, do by the Space of Fourteen Days neglect or refuſe to proceed thereon, that then the *Sub-Commiſſioners*, or the major Part of them appointed for any Place, ſhall be, and are by the ſaid Act impowered to hear and determine the ſame; and if the Party find himſelf aggrieved by the Judgment given by the ſaid *Sub-Commiſſioners* he ſhall and may Appeal to the Juſtices of the Peace at the next Quarter-Seſſions, who are hereby impowered and authorized to hear and determine the ſame, whoſe Judgment therein ſhall be final.

Obſerve here, That the Words relating to theſe Appeals are not general, or ſuch as may be applied equally or indifferently, as well to the Judgments given by Juſtices of the Peace, as to Judgments by *Sub-Commiſſioners*; but on the contrary, they are limited and reſtrained to ſuch Judgments only as are given by *Sub-Commiſſioners*, in whom the Parliament did not (it ſeems) ſo intirely confide, as in the Juſtices of the Peace, but have made the before-mentioned Diſtinction between the Judgments of the one and of the other, which muſt be obſerved and purſued; and therefore the Liberty of Appealing, by this Clauſe cannot be applyed to ſuch Judg-

ments

ments as are given by Juſtices of the Peace, for that would be extending the Meaning of this Clauſe beyond the plain Words thereof.

There not being any other Clauſe in this Act for giving the like liberty of Appealing, from Judgments given by Juſtices; it plainly appears, that there is not by this Act any Appeal from ſuch Judgments by Juſtices, nor is there any Liberty of Appealing from the Judgments of Juſtices by any other of the Acts of Parliament relating to the Duties of Exciſe, or other like Duties, untill the making of the reſpective Acts for the Laying the ſeveral Duties upon Malt, &c. and upon Sale, and upon Hides, in each of which reſpective Acts there are expreſs Clauſes for giving Liberty of Appealing from Judgments given by Juſtices of the Peace.

It will be in vain to urge or argue the Reaſonableneſs of having the like Liberty to appeal from the Judgment of Juſtices in Cauſes relating to the ſaid other Duties, as well as in Cauſes relating to the Duties on Malt, Sale, and Hides: For when a new and particular Juriſdiction is not only created, but is limited and ſettled by any Act or Acts of Parliament, the written Law is in ſuch Cales a ſurer Guide than the Reaſoning of particular Men; and therefore ſuch Act and Acts of Parliament muſt in all ſuch Cales be the Rule to go by, untill ſuch Juriſdiction is altered or inlarged by ſome other Act or Acts of Parliament, as appears by the inſerting in the ſaid laſt mentioned Acts, expreſs and particular Clauſes for the giving Appeals in Cauſes relating to thoſe particular Duties; but if ſuch Appeals could have been maintained without ſuch expreſs and particular Clauſes, the inſerting

thoſe

thoſe Clauſes in the ſaid laſt mentioned Acts would then have been altogether unneceſſary.

The Clauſe in the Malt Act relating to Appeals is thus, *viz. That if either Party think him or themſelves aggrieved by any Judgment or Order to be given or made by any Juſtices of the Peace, in Purſuance of this preſent Act, touching or concerning the Duties hereby granted, or any Penalty or Forfeiture relating to the ſame: It ſhall and may be lawful to, and for ſuch Perſon or Perſons ſo finding him, her, or themſelves aggrieved by ſuch Judgment or Order, to appeal from the ſame, to the Juſtices aſſembled at the next General Quarter-Seſſions of the Peace, to be holden for the County, Shire, or Stuarty, where ſuch Judgment or Order ſhall have been made, which ſaid Juſtices of the Peace or the major Part of them, are hereby impowered to* hear, and finally determine the ſame; *and no Writ of* Certiorari *ſhall be allowed, or brought to ſet aſide any Determination or Order of the ſaid Juſtices.*

Obſerve, that the Appeal in theſe Caſes is to be at the next Quarter-Seſſions; and by the next Clauſe it is provided, That the Party appealing ſhall give to the other Party Notice in Writing of his Intention to appeal Six Days before the Quarter-Seſſions; and if there is not Six Days Space between the Firſt Judgment and the next Quarter Seſſions, then the Appeal may be made at the Second Quarter-Seſſions after the Firſt Judgment.

It is further provided by this Act, That the Juſtices at the Quarter-Seſſions may award Coſts to either Party.

Purſuant to the ſaid Clauſe, Appeals have been frequently made to the Juſtices at the Quarter-Seſſions, againſt Judgments given by Juſtices

of the Peace in Cauſes relating to the Malt Duty; and at the Hearings upon ſuch Appeals, it hath in ſome Inſtances happened, that inſtead of proceeding upon the Merits of ſuch Cauſes, the Juſtices of the Quarter-Seſſions have been prevailed upon to proceed on Exceptions taken to the Forms of the Judgments, from which ſuch Appeals have been made; and upon ſuch Exceptions have reverſed ſuch Judgments, and have then diſmiſſed the Parties without proceeding to hear or examine into the Merits and Truth of Facts in queſtion: And that even in Caſes where the Exceptions were not for or on Account of any Defect or Faults in the Informations, but were only to Matters of Form in the Entering up ſuch Judgments, or in ſome other Part of the Proceedings: And tho' the Informations in ſuch Cauſes, which by Virtue of ſuch Appeals were transferred to the Juſtices at the Quarter-Seſſions, and were then actually before them, were not any ways defective, but were proper and ſufficient Informations, on which the Merits of the Matters in queſtion might have been fully and finally determined; yet the Juſtices at the Quarter-Seſſions have refuſed to proceed thereon, or to make any final Determination in ſuch Cauſes ſo brought before them, and have apprehended, that ſuch their Proceedings have been right; becauſe when Orders or Adjudications made by Juſtices of the Peace in other Caſes, have by Writs of *Certiorari*, been removed and brought before the Judges in the *King's-Bench*, they, the Judges upon Exceptions taken to ſuch Orders or Adjudications, have ſometimes reverſed or quaſhed ſuch Orders or Adjudications, and have not in ſuch Caſes made any other Order or Adjudication

in the Place and Stead of those which have been so quashed and reversed.

Whereas the Expression in the latter Part of the said Clause, viz. *And no Certiorari shall be allowed or brought*, &c. plainly intimates, That it was not intended that upon these Appeals these Causes should be proceeded upon as on *Certiorari's*, but upon the very Right and Merits in each particular Cause: But proceeding on these Appeals in such manner as on *Certiorari's*, seem oth directly contrary to the Intent and Meaning of this Part of the said Clause.

Besides, Writs of *Certiorari* are of a Nature quite different from these Appeals, *viz.* Such *Certiorari's* are only to remove into the *King's-Bench* the Record of an Order or Adjudication made by Justices of the Peace, to the Intent, that the Judges in the *King's-Bench* by inspecting such Record so returned, may thereby see and judge whether the Fact as it is set forth in such Return be a sufficient Foundation in point of Law, to warrant and maintain such Order or Adjudication, thereupon made by the Justices of the Peace. But the Judges in the *King's-Bench* have not by such *Certiorari* so returned to them, any Power to inquire into the Fact or Offence mentioned in such Return, or any Means or Method to have or receive any Knowledge or Information touching the same, other or farther than as the same is set forth in such Return; but they must admit and take the Fact to be just as it appeareth in and by such Return; and if by such Return there doth not appear Matter sufficient to maintain the Adjudication or Order made by the Justices of the Peace, the Judges of the *King's-Bench* cannot avoid reversing or

quashing such Order or Adjudication; and having so done, they cannot proceed any farther, because (as before has been said) they cannot receive any other or farther Information, touching the Fact or Offence mentioned in such Return.

But Appeals are of a Nature quite different, *viz.* An Appeal is a Resort from an Adjudication or Sentance already given by one Court or Judicature to a superiour Court or Judicature, to the Intent that all that was heard by the Judicature or Court who made such Adjudication or Sentance, may again be heard and inquired into by the Court or Judicature, to which such Resort or Appeal is made: And in such Cases the superiour Court so appealed to doth always re-hear and inquire into the Fact, as fully as did the Court who made the first Adjudication or Sentance, which being done, the superiour Court doth either affirm the first Adjudication or Sentance, or in the Stead thereof doth make such other Adjudication or Sentance as seemeth Just, and according to the Merits of the Fact then before such superiour Judicature.

This is the constant Method and Course upon Appeals in the Courts of Civil Law; likewise on Appeals to the Lord Chancellor, or Lord Keeper; from Decrees made by the Master of the Rolls, all the Evidence made use of at the Hearing before the Master of the Rolls, is again made Use of on the Hearing such Appeal before the Lord Chancellor, who thereupon, either affirms the Decree made by the Master of the Rolls, or in the Stead thereof, maketh such other Decree as upon such Proof and Evidence appeareth to him to be Just, and according to the Merits of the Cause then before him: And the like

Method

Method is obſerved upon Appeals to the Houſe of Lords, from Decrees made in the Court of Chancery, or Court of Exchequer; in all which Caſes the ſuperiour Court to which ſuch Appeal is made, doth not confine it ſelf to a bare Examination of the Forms of the Proceedings, but goeth upon the Merits of the Cauſe then before ſuch ſuperiour Court; and if thereupon the ſuperiour Court finds any Fault or Faults in the firſt Decree, the ſuperiour Court doth not ſtop there, but proceeds to make ſuch Decree as ſhould have been made at firſt.

In the like Manner the Juſtices at the Quarter-Seſſions ſhould proceed upon the Merits of each Caſe: And in order thereto they have full Power to hear all the Evidence, and to examine all ſuch Witneſſes as were heard or examined before the particular Juſtices who gave the firſt Judgment; and having ſo done, and being fully informed of the Truth and Merits of the Matter in queſtion, they may either reverſe the Firſt Judgment given by ſuch particular Juſtices, or may affirm the ſame either in part or in the whole, or may in the Stead thereof make ſuch other Judgment or Adjudication as to them ſeemeth Juſt; and therefore if upon an Information for an Offence by which the Defendant forfeited Fifty Pounds, the particular Juſtices before whom the Information was Firſt laid have given Judgment againſt the Defendant for ſuch Fifty Pounds, and have after mitigated ſuch Fifty Pounds to Ten, Twenty, or Thirty Pounds, the Juſtices at the Quarter-Seſſions may affirm the Firſt Judgment as to the Fifty Pounds; and yet (if they think fit) may reverſe the Mitigation, and may let the Judgment ſtand for the

whole Fifty Pounds, or they may alter the Mitigation and make it either more or leſs as to them ſeemeth Juſt. And tho' the Juſtices who gave the Firſt Judgment did not make any Mitigation, yet the Juſtices at the Quarter-Seſſions may (if they ſee Cauſe) make ſuch Mitigation as to them ſeemeth Juſt; for by the Appeal the whole Matter is before them, as appeareth by the printed Opinions of Sir *Edward Northey*, and Sir *Robert Raymond*, and therefore the Juſtices at the Quarter-Seſſions are Judges of the Mitigation as well as of the Penalty; and in one Inſtance their Power exceeds the Power of the Juſtices who gave the Firſt Judgment, *viz.* The Juſtices who gave the Firſt Judgment cannot allow or adjudge any Coſts or Charges beyond the Penalty; but the Juſtices at the Quarter-Seſſions may (if they ſee Cauſe) adjudge and allow Coſts and Charges even beyond the Penalty.

But you are to know that no other Witneſſes ought to be examined upon Hearing Appeals, but ſuch only as were examined on the Hearing before the Juſtices who gave the firſt Judgment; for ſo is the Law and the conſtant Courſe and Practice on all the Appeals before-mentioned; for the Hearing upon an Appeal is not an original Hearing, but is only a Reſort to another Judicature, in the ſame Cauſe and under the ſame Circumſtances as it was at firſt heard.

And thereupon the Judicature ſo appealed to, is to give ſuch Judgment as ſhould have been given on the firſt Hearing, ſo that if the firſt Judgment was wrong, the Judicature appealed to, ought inſtead thereof, to give ſuch Judgment as is right: And this is agreeable not only to the Practice and Uſage upon Appeals before-

mentioned, but alſo to the Courſe and Practice of the Common-Law; for where a Judgment given in an inferiour Court of Common-Law is by Writ of Error removed into a ſuperiour Court, and Error is found in ſuch Judgment given by ſuch inferiour Court, the ſuperiour Court doth not always content it ſelf with barely Reverſing the firſt Judgment; but having ſo done, the ſuperiour Court in all Caſes where it can, proceedeth to give a right Judgment inſtead of that which was wrong, as may be ſeen in 1 *Rolls Abridgment, Fol.* 774. *Placito* 2, & 3. where it is ſaid, That a ſuperiour Court is in ſuch Caſe to give the ſame Judgment as the inferiour Court ought to have done: And in 1 *Rolls Abridgment, Fol.* 805. *Placito* 8. where it is ſaid, That upon Reverſing the Firſt Judgment, the ſuperiour Court ought to give Judgment againſt the Plaintiff, or againſt the Defendant if the inferiour Court ought ſo to have done: And accordingly the Courts of Common-Law when upon Writs of Error they reverſe Judgments do not always ſtop there; but in all Caſes where they can, they proceed to give ſuch Judgments as may be final and concluſive to both Parties.

Such Judgments or Adjudications whereby Cauſes are ſo finally determined, are for the Honour of Judicatures, and for the Advancement of Juſtice; but when a Judicature either hath or (if they will) may have ſufficient whereon to give ſuch a Judgment as may be final and concluſive, it would be below the Dignity of ſuch Judicature inſtead thereof to give ſuch a Judgment as would only ſhew the Defects or Miſtakes in the firſt Judgment, but would leave the Matter in queſtion as much undetermined

as it was at firſt, and the Proſecutor to begin a new Proſecution for the ſame Fact or Offence, for the Law abhorreth Circuity of Actions, and all unneceſſary Delays.

Beſides giving ſuch Judgment as is not deciſive in Caſes where a deciſive Judgment may be given, is deferring to do Juſtice; *Magna Charta* is as much againſt the deferring to do Juſtice, as againſt denying to do Juſtice, and every unneceſſary deferring to do Juſtice is in Fact a temporary denying to do Juſtice; but it is for the Benefit of both Parties that Suits ſhould be ended.

Since therefore the Juſtices at the Quarter-Seſſions are to inquire and be informed of the Truth and Merits of theſe Cauſes brought before them; by theſe Appeals it ſeemeth altogether unneceſſary for them to hear Debates upon Exceptions to the Forms of the Proceedings; for if after ſuch Debate they find the Forms of the Proceedings to be ſufficient, they muſt then hear and examine the Witneſſes as to the Fact and Truth of the Matter in queſtion, and muſt thereupon make ſuch Adjudication as to them ſeemeth juſt; and tho' upon ſuch Debate ſome Fault ſhould be found in the Form of ſome part of the Proceedings, yet if the Information be ſufficient they muſt then alſo hear and examine the Witneſſes as to the Fact and Truth of the Matter in queſtion, and if the firſt Judgment be wrong, the Quarter-Seſſions muſt or ought in the Stead thereof, to make ſuch Adjudication as to them ſeemeth juſt, ſo that either way the Time which ſhall have been ſpent in debating upon ſuch Exceptions will prove to be ſo much Time ſpent, and ſo much Labour loſt to no manner of purpoſe; and not only ſo, but after the

Juſtices

Juſtices at the Quarter-Seſſions have been tired with long Debates upon Exceptions which are not material, they will (in all probability) be the leſs attentive and obſerving of that which is material, *viz.* The Truth of the Fact and Merits of the Matter in Queſtion.

Beſides, if in theſe Caſes Juſtices of the Peace undertake to judge of nice Exceptions, they will ſometimes be prevailed upon to allow ſuch Exceptions as would not have been allowed in *Weſtminſter-Hall*; of which there having been many Inſtances, it may not be amiſs here to mention one, *viz.*

A Maltſter having appealed to the Quarter-Seſſions from a Judgment given againſt him by two Juſtices of the Peace, and the Appeal coming on to be heard, the Council for the Informer inſiſted to proceed on the Merits of the Cauſe, and to call their Witneſſes to prove the Fact, which was oppoſed and over-ruled, and inſtead thereof, the Chairman (a Gentleman of the Law) was pleaſed to take Four Exceptions, *viz.*

1. The Record then before the Quarter-Seſſions mentioning, That the Information was exhibited before, *&c.* It was objected thereto, that it was not mentioned, That the Information was exhibited (*in Writing*;) ſo that the pretended Defect was the not inſerting the Words, (*in Writing*).

2. That tho' in the Information it was expreſſed, That the Offence was committed within Three Months laſt paſt before the exhibiting the Information, *viz.* on the Five and Twentieth Day of *January* then laſt paſt, there were alſo added theſe Words, *viz.* or on ſome other Day within Three Months laſt paſt, the Exception

was

here against the Adding these last Words, whereby it was insisted the Information was uncertain.

3. That the House where the Hearing had been, and at which the Defendant had been summoned to appear, was not mentioned in the Record to be publick a House; and thereupon it was argued, that it might be at a private House where the Defendant without Leave could not safely come to make his Defence.

4. The Judgment being in these Words, *viz.* It is now here considered and adjudged by us the said Justices, That the Defendant is guilty of the Premises in the Information in Manner and Form as in and by the said Information is objected against him, and that he thereby hath forfeited Seven Pounds of lawful Money, *&c.* of which said Seven Pounds we adjudge one Moiety to be to the Use of his said Majesty, *&c.* The Objection to this Judgment was, that in the last part thereof it was not expressed thus, *viz.* Of which said Seven Pounds we hereby adjudge, *&c.* So that the Fault alledged was the not inserting there the Word (*hereby*).

The First Objection had nothing in it; for it being expressed in the Record thus, *viz.* The Informer exhibiteth to us, *&c.* His Information, the said Word, *exhibiteth*, did necessarily imply that the Information was in Writing; for nothing can be exhibited but what is in Writing; and therefore it was totally unnecessary to add the said Words (*in Writing*) *Quod nec sensato subintelligitur non dicit*; besides the Justices then having before them the very same Information as had been exhibited before the Two Justices who had given the first Judgment; the Justices at the

Sessions

Seſſions could not but ſee, and muſt judicially take Notice, that the Information was in Writing; and *Quod conſtat clare non debet verificare* hath always been allowed a good Rule in Law.

As to the ſecond Objection there being a particular Day mentioned in the Information when the Offence was committed, the Words objected againſt, *viz.* or on ſome other Day within three Months laſt paſt, were at worſt but Surpluſage.

As to the Third Objection, the Houſe where the Hearing had been, and at which the Defendant was by the Summons required to appear, as it was deſcribed and mentioned in the Record, was known to all the Juſtices, and to the whole Country to be a publick Houſe; however, it appeared by the Record, that the Defendant was admitted into the ſaid Houſe, and had there made his Defence, ſo that the Objecting that he might not come there without Leave, was nothing but Pretence: Beſides the Act of Parliament hath not appointed any particular Place for theſe Hearings, and therefore the Juſtices may appoint them to be at what Places they pleaſe, provided thoſe Places be in the proper County.

As to the Fourth Objection, if the Word (*hereby*) had followed the Word *adjudge*, (as according to the Chairman's Opinion it ought to have done,) the Word *hereby* could have referred to nothing but to the Judgment, ſo that if the Word *hereby* had been added, the Senſe would then have been thus, *viz.* we adjudge by our Judgment, which ſurely would at the beſt have been Tautology.

However

However it so happened, that upon the before-mentioned Exceptions only, and without Hearing or Examining the Witnesses as to the Fact and Merits of the aforesaid Case, the Judgment was reversed, and the Information for the Reasons before being adjudged insufficient, the Justices at the Quarter-Sessions did not make any further Judgment or Determination in that Case: But if every Information is to be adjudged insufficient on such Exceptions as some of these, then adieu to all Prosecutions of this kind before Justices of the Peace, for it will not be possible for any one to draw an Information so, but that another may fancy that some of the Words thereof ought to have been omitted, and that some other Words ought to have been inserted therein.

It ought to be considered, That the Informations in these Cases being generally drawn and prepared by Officers of Excise, it cannot be expected that these should be so correct and exact as Informations in the like Cases in the Courts of *Westminster*, which are prepared by experienced Clerks, and perused by Council learned in the Law.

Besides, between these Informations laid before Justices of the Peace, and Informations for the like Offences laid in the Courts of *Westminster*, there is this Difference, *viz.* If upon Informations laid in the Courts of *Westminster* for Offences against these Laws, Judgment is given for the Informer, such Judgment must be for the whole Penalty; and the Courts of *Westminster* cannot afterwards mitigate such Penalty, but the particular Justices of the Peace on their first giving Judgments against Defendants in these Cases,

Cases, or the Justices at the Quarter-Sessions upon their affirming such Judgments, may either of them mitigate such Penalty; and therefore it seemeth not necessary, that the Proceedings before Justices of the Peace should be so nice and correct as the like Proceedings in the Courts of *Westminster*, where such Mitigations cannot be made, the Consequences being more penal in the one than in the other Case.

It should be farther observed, That altho' all that is recorded by the Justices before the granting of the Summons is commonly called the Information, yet it is not so in Fact, but on the contrary, the Beginning thereof, viz. The Memorandum made of the Day, Year, Month, and Place of the Informer's laying the Information before the Justices, and all the rest which goeth before the Settingforth of the Fact and Offence is not properly and strictly Speaking any Part of the Information, but is a Record made by the Justices of the Laying such Information before them; since therefore that Part of the Proceedings in these Cases is not the Act of the Informer, or any Part of his Information, but is the Act of the Justices; if any Mistake happen therein, such Mistake ought to be rectified by the Justices before whom such Information was first laid, and ought not to be made Use of in prejudice to the Informer.

It is to be hoped, That Gentlemen who are in the Commission of the Peace will consider the Trust reposed in them by these Laws, and how greatly they may be serviceable both to their King and Country, if they proceed upon the Truth and Merits of the Facts and Offences brought before them on these Prosecutions; but

if

[illegible] they chuse to proceed on [illegible] and thereupon reverse and [illegible] legally given [illegible] full Hearing [illegible] the Consequence will be, that [illegible] against these Laws will be prosecuted [illegible] Court of Exchequer, (as by the several Acts of Parliament they may be) and then the Charge of defending such Prosecutions will amount to a great deal more than the Money [illegible] given by Justices of the Peace. Besides, in every Instance where an Offender really guilty, is by Nicetie and Subtleties screened from the Punishment due to him for fraudulently contriving to avoid paying just Duties, is not only Injustice to the Prosecutor in such case, but an Injury to all others who pay the like Duties as such Defendant ought to pay. And it may be further observed, That perhaps it may be a Question whether curious Inquiring into the Certainty or Uncertainty of Expressions will not occasion more Uncertainty, than it will prevent.

Besides, when these Acts of Parliament do [illegible] the Justices to hear and determine upon Matters of Fact, it seemeth extraordinary [illegible] that if perchance an Objector can [illegible] Words or Expressions which perhaps might have been more apt and proper than some Words and Expressions which may happen [illegible] that Justices are to spend most of their Time critically examining their Words and Expressions against which such Objections are made upon [illegible]

It is also obvious, that these Appeals have been made [illegible] all the Parliament in giving this

Liberty

Liberty of Appealing [illegible]
or Deſign, [illegible]
a Power barely [illegible]
been done by the [illegible]
theſe Informations are [illegible]
thought a notable [illegible]
Judgments, and [illegible]
large, and the Fact [illegible]
the Words *finally determine*, in [illegible]
tioned Clauſe plainly intimate, [illegible]
ment of the Juſtices at the [illegible]
ſhould be a final Determination upon the Fact, and not upon the Form of the Proceedings; and in *Coke*'s 2d. *Inſtitutes*, *Fol.* 360. it is ſaid, *Intereſt Reipublicæ res adjudicatas non reſcindi*; It is for the Benefit of the Publick, that Things adjudged ſhould not be made void.

Where, therefore, an Information is laid for a Fact committed within Three Months next before the laying ſuch Information, and ſuch Fact is in ſuch Information expreſſed and mentioned in ſuch manner, as (if true) will make the Defendant liable to any Forfeiture or Forfeitures, of which the Juſtices of the Peace have Juriſdiction; ſuch Information ought to be deemed and allowed to be ſufficient, and ought to be proceeded upon: And although it may be made appear, That another Information in the like Caſe, might have been drawn better than the preſent one, yet it ought not to be determined, that ſuch preſent one is [illegible] and insufficient; for it is not a neceſſary Conſequence, That this is wrong, becauſe another might have been better. But if the Information be ſuch, as upon Proof of the Fact may be a ſufficient Foundation for giving a legal Judgment [illegible]

thereupon for the Informer, such Information ought to be deemed sufficient, especially in these Informations before Justices of the Peace; for the Law approveth of a legall Certainty, yet it disliketh such captious Pretence of Certainty as doth confound the true and legall Certainty. *Coke's 8th Report, Fol. 56. B.* The Earl of *Rutland's* Case, in which Case the Judges complain, that of late Times nice and strained Constructions had been made, which are there said to be clearly against the true Reason and antient Rule of Law.

FINIS.